



## CITY OF NEWPORT BEACH HEARING OFFICER AGENDA

Newport Beach City Hall, Council Chambers  
3300 Newport Boulevard  
Thursday, December 15, 2011 – 9:30 a.m.

*Judge John C. Woolley, Hearing Officer*

**Staff Members:**

Brenda Wisneski, AICP Deputy Community Development Director  
Javier Garcia, AICP Senior Planner

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1) **CALL MEETING TO ORDER**

2) **APPROVAL OF MINUTES**

3) **PUBLIC HEARINGS**

Item No. 1. Abatement Period Extension Request – Dr. Frankenberger – Abatement Period Extension No. PA2010-147  
601 Irvine Avenue Council District 2

Summary: Application for extension of the abatement period in accordance with Section 20.38.100 C.4 of the Newport Beach Municipal Code. The property is occupied by a 940 square foot dental office and a 1,550 square foot residential unit. No new development or construction is proposed at this time. The applicant wishes to allow the existing nonresidential use to continue for an extended period of time without abatement for a period of 10 years. The property is located in the R-1 (Single-Unit Residential) District.

Recommended  
Action:

- 1) Conduct public hearing; and
- 2) Hearing Officer determination. Options include continuance, approval of Abatement Period Extension No. PA2010-147 with conditions, or denial of abatement period extension. In the latter two cases, the Hearing Officer may instruct staff to prepare a Resolution for signature.

CEQA

Compliance: The project is exempt from environmental review pursuant to Section 15301, Class 1 (Existing Facilities) of the Implementing Guidelines of the California Environmental Quality Act.

Item No. 2. Abatement Period Extension Request - The Rawlins Family Trust - Abatement Period Extension No. PA2011-032  
1441 and 1455 "J" Superior Avenue Council District 2

This hearing is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Hearing Officer's agenda be posted at least seventy-two (72) hours in advance of each regular hearing and that the public be allowed to comment on agenda items before the Hearing Officer and items not on the agenda but are within the subject matter jurisdiction of the Hearing Officer. The Hearing Officer may limit public comments to a reasonable amount of time, generally three (3) minutes per person.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act ("ADA") in all respects. If, as an attendee or a participant at this hearing, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. If requested, this agenda will be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Please contact the Community Development Department at least forty-eight (48) hours prior to the hearing to inform us of your particular needs and to determine if accommodation is feasible at 949-644-3200.

Summary: Application for extension of the abatement period in accordance with Section 20.38.100 of the Newport Beach Municipal Code. The property is occupied by an 8,233 square foot medical office building and a vacant lot utilized for boat storage purposes. No new development or construction is proposed at this time. The applicant wishes to allow the existing nonresidential use to continue for an extended period of time without abatement for a period of 10 years. The property is located in the Multi-Unit Residential [(RM) 2420]] District.

Recommended

Action: 1) Conduct public hearing; and  
2) Hearing Officer determination. Options include continuance, approval of Abatement Period Extension No. PA2011-032 with conditions, or denial of abatement period extension. In the latter two cases, the Hearing Officer may instruct staff to prepare a Resolution for signature.

CEQA

Compliance: The project is exempt from environmental review pursuant to Section 15301, Class 1 (Existing Facilities) of the Implementing Guidelines of the California Environmental Quality Act.

Item No. 3. Abatement Period Extension Request – Lisa de Lorimier - Abatement Period Extension No. PA2011-033  
1455 Superior Avenue “G” Council District 2

Summary: Application for extension of the abatement period in accordance with Section 20.38.100 C.4 of the Newport Beach Municipal Code. The property is currently vacant, but has been utilized for boat storage purposes for a number of years since 2006. There are no structures on site and no new development or construction is proposed at this time. The applicant wishes to allow the existing nonresidential use to continue for an extended period of time without abatement for a period of 10 years. The property is located in the Multi-Unit Residential [(RM) 2420]] District.

Recommended

Action: 1) Conduct public hearing; and  
2) Hearing Officer determination. Options include continuance, approval of Abatement Period Extension No. 033 with conditions, or denial of abatement period extension. In the latter two cases, the Hearing Officer may instruct staff to prepare a Resolution for signature.

CEQA

Compliance: The project is exempt from environmental review pursuant to Section 15301, Class 1 (Existing Facilities) of the Implementing Guidelines of the California Environmental Quality Act.

#### 4) **PUBLIC COMMENTS ON NON-AGENDA ITEMS**

Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Hearing Officer. Speakers must limit comments to three (3) minutes. Before speaking, we invite, but do not require, you to state your name for the record. The Hearing Officer has the discretion to extend or shorten the speakers' time limit on non-agenda items, provided the time limit adjustment is applied equally to all speakers. As a courtesy, please turn cell phones off or set them in the silent mode.

#### 5) **ADJOURNMENT**

If in the future, you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues which you (or someone else) raised orally at the public hearing or in written correspondence received by the City at or before the hearing.

Any writings or documents provided to the Hearing Officer regarding any item on this agenda will be made available for public inspection in the office of the Planning Division located at 3300 Newport Boulevard, during normal business hours.

**APPEAL PERIOD:** An appeal may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

**CITY OF NEWPORT BEACH**  
**HEARING OFFICER STAFF REPORT**  
December 15, 2011 Hearing  
Agenda Item 1

**SUBJECT:** Frankenberger Property- Abatement Extension Request - (PA2010-147)  
601 Irvine Avenue

**APPLICANT:** Dr. Arnold Frankenberger, Property Owner

**PLANNER:** Javier S. Garcia AICP, Senior Planner  
(949) 644-3206, [jgarcia@newportbeachca.gov](mailto:jgarcia@newportbeachca.gov)

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**PROJECT SUMMARY**

Application for extension of the abatement period in accordance with Section 20.38.100 C.4 of the Newport Beach Municipal Code. The property is occupied by a 940 square foot dental office and a 1,550 square foot residential unit. No new development or construction is proposed at this time. The applicant wishes to allow the existing nonresidential use to continue without abatement for a period of 10 years.

**RECOMMENDATION**

Staff recommends the Hearing Officer conduct a public hearing, receive testimony from the applicant, the city staff, and members of the public. At the conclusion of the public hearing, it is recommended that the Hearing Officer:

1. Adopt the attached Resolution, based on the findings and considerations discussed in this report, approving the Abatement Period Extension to ten years (See Attachment No. 1).

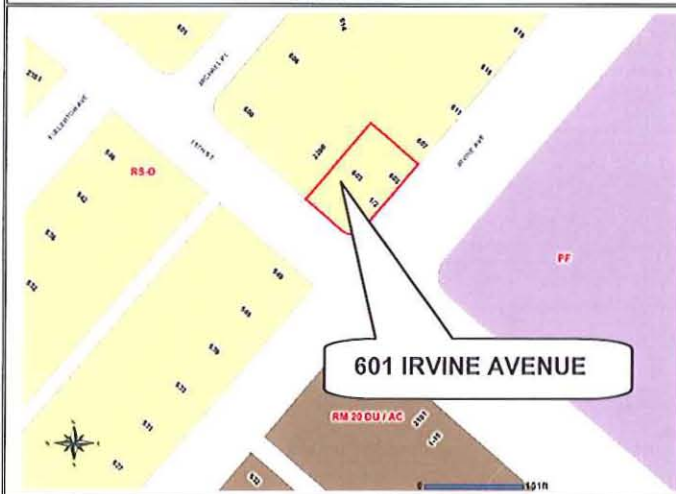




### VICINITY MAP



### GENERAL PLAN



### ZONING



LOCATION	GENERAL PLAN	ZONING	CURRENT USE
601 IRVINE AVE	RS-D (Single-Unit Residential-Detached)	R-1 (Single-Unit Residential)	Mixed-Use, Dental Office and Residential Unit
NORTH, SOUTH AND WEST	RS-D (Single-Unit Residential-Detached)	R-1 (Single-Unit Residential)	Single-Unit Residential Dwellings
EAST	PF (Public Facilities)	PF (Public Facilities)	Newport Harbor High School

## INTRODUCTION

### Project Setting

The subject property is located on the northwest corner of Irvine Avenue and 15<sup>th</sup> Street. The property is bounded on all sides by residential uses, with the exception of Newport Harbor High School located across Irvine Avenue to the east.

### Project Description

The applicant requests an extension of the abatement period of the nonconforming nonresidential use which is located in the in the R-1 (Single-Unit Residential) District (Attachment No. 2). The property is occupied by a 940 square foot dental office and a 1,550 square foot residential unit. No new development or construction is proposed at this time. The applicant wishes to allow the existing nonresidential use to continue for an extended period of time without abatement for a period of not less than 10 years. Photos of the existing building are provided as Attachment No. 3

### Background

Information submitted by the applicant and available in city records indicate, the building was constructed in 1948. The property was included in the Seaquist Annexation that was adopted in 1956 for single-family residential use (R-1) and was the only property in the annexed area that contained a nonresidential use (mixed use). The building has been nonconforming since that time, 55 years.

On June 15, 1971, the Modifications Committee approved Modification Permit No. 340, to allow structural alterations to the nonconforming mixed-use building. The plans from that approval are attached for the Hearing Officer's information (Attachment No. 4). The site plan shows parking for six vehicles, two of which are garage spaces for the residential unit.

The applicant purchased the property in August 1998 with the 2,490 square-foot mixed-use building. Although the building has been remodeled in the past, there have been no significant changes to the size of the building.

On July 25, 2006, the Newport Beach City Council adopted Resolution No. 2006-76 approving a comprehensive update to the Newport Beach General Plan ("General Plan Update").

On January 28, 2008, the City Council adopted Ordinance No. 2008-05, which in addition to other Zoning Code changes, established the maximum time period for the abatement and termination of nonconforming uses in residential districts.

On October 25, 2010, the City Council Adopted a Comprehensive Update to the Zoning Code (Newport Beach Municipal Code Title 20, NBMC) bringing consistency between the Zoning Code and the Land Use Element of the General Plan. The subject property has remained nonconforming since annexation on August 13, 1956. The nonresidential use of the property is subject to abatement in accordance with the following Section of Chapter 20.38 of the NBMC:

20.38.100 Abatement Period.

- C. Residential zoning districts involving a structure. In residential zoning districts or in an area where residential uses are allowed in planned community districts or specific plan districts, a nonconforming use of land involving a structure shall be discontinued as follows:
  - 1. Abatement period. A nonconforming use of land involving a structure in a residential zoning district shall be discontinued on the earliest date as follows:
    - a. Within one year; or
    - b. Upon the expiration of the term of a lease on the property. Any lease shall be the last lease entered into for the subject property prior to December 7, 2007; or
    - c. Upon the expiration of a current operating license that is required by State law.

The City sent letters to all known properties with uses that are subject to abatement. The abatement order for the subject property was issued on July 26, 2010. Staff explained to those owners the options available to them to remedy their individual situations. Those remedies may include conversion of use or development to a residential use; request for extension of the abatement period; and/or request to amend the General Plan, Coastal Land Use Plan (where applicable) and Zoning Code to allow the continuation of the commercial use. In the case of the subject application, the owner chose to pursue an extension of the abatement period to amortize his investment of the current improvements on the subject property.

## **DISCUSSION**

### *General Plan*

The Land Use Element of the General Plan generally guides the future development of the City and would generally allow the continuation of legally established structures and uses; and does not specify requirements for abatement of nonconforming uses. The Zoning Code is the regulatory tool that implements and regulates the provisions of the General Plan.



### *Zoning Code*

In the case of the subject property, in order to make it consistent with the Zoning Code, would require the abatement of the nonresidential use. However, the Zoning Code allows for a procedure to grant an extension of the abatement period for the continued use of the existing building and nonresidential use. The approval authority for the extension lies with the Hearing Officer in accordance with the provisions of Section 20.38.100C 4b of the NBMC. The Hearing Officer is also required to conduct a public hearing on the request in compliance with Chapter 20.62 of the NBMC.

### Findings and Considerations:

In accordance with the provisions of Chapter 20.38 of the NBMC, the Hearing Officer, by resolution, shall approve, conditionally approve, or deny the request for an extension to the abatement period. The resolution shall include: findings of fact; evidence presented of economic hardship arising from the abatement proceedings; the nonconformity's impact on the community; and other factors that may affect the length of the abatement period required to avoid an unconstitutional taking. Once the Hearing Officer makes his determination, he will direct staff to prepare the appropriate resolution to approve or deny the extension request.

In accordance with the provisions of Section 20.38.100 (C-4c), the Hearing Officer in reviewing an application for an extension to the abatement period shall consider the following:

- (1) Length of the abatement period in relation to the owner's investment in the use;
- (2) Length of time the use was operating prior to the date of nonconformity;
- (3) Suitability of the structure for an alternative use;
- (4) Harm to the public if the use remains beyond the abatement period; and
- (5) Cost and feasibility of relocating the use to another site.

The applicant has submitted information in support of the request (Attachment No. 3). Staff has reviewed the information submitted by the applicant and has summarized it below to address the findings and considerations that the Hearing Officer may use in making his determination.

- (1) Length of the abatement period in relation to the owner's investment in the use;**

The current owner purchased the building in August 1998, and was the leaseholder from 1982 to 1998. According to the property owner and city records, the building has been occupied as a mixed use since before annexation. The property owner operates the dentist office and occupies the residential unit on site. The property owner would

suffer economic hardship if required to abate the use since the dental office is his primary means of support.

The one year abatement period specified by the Municipal Code is not of sufficient duration to amortize the property owner's investment, especially since the dental office provides his primary income. The information submitted by the tenant's attorney indicates that a minimum abatement period of ten years (December 15, 2021) is necessary to recover his investment in the property and to avoid an unconstitutional taking of the property owner's property.

The applicant indicates that he has made \$55,000 in improvements since purchasing the property in 1998. The improvements were not related to building permits that staff could identify, but may be related to dental equipment installed.

Therefore, it is noted that the Hearing Officer may consider the requested ten year abatement period and may consider a greater period of time to account for the potential loss in income and ensure avoidance of an unconstitutional taking of property.

**(2) Length of time the use was operating prior to the date of nonconformity;**

According to building records, the building was constructed in 1948 as a mixed-use building. It has maintained a nonresidential use and one dwelling unit since its original construction. The property was annexed as unincorporated territory to the city in 1956. Therefore, building and its mixed-use have been nonconforming for the past 55 years.

The existing structure and use conformed to the Land Use Element of the General Plan and Zoning District of the County of Orange prior to annexation.

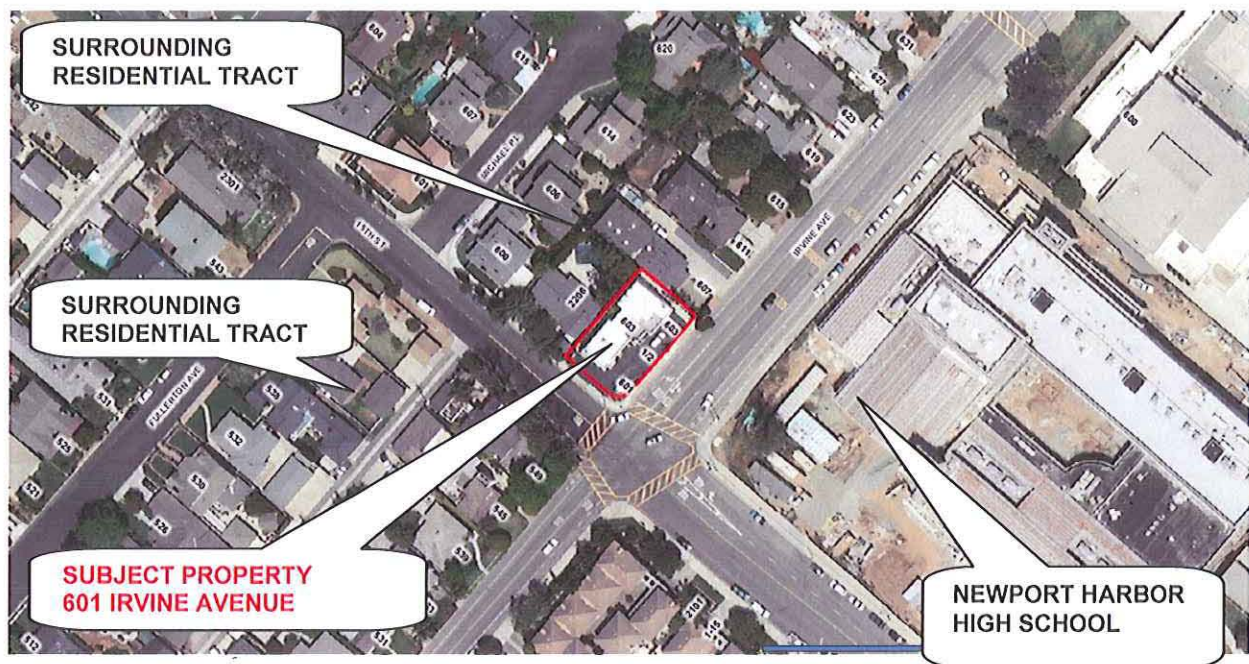
**(3) Suitability of the structure for an alternative use;**

The building could be modified to accommodate other commercial or residential uses. The current portion of the building occupied by the dentist office is suitable for an expansion of the existing residential use without extensive demolition, or major renovation. An expansion of the existing residential use would conform to current Municipal Code requirements pertaining to floor area and parking (two-car garage exists on site).

However, the loss of the property owner's primary income due to abatement would subject the property owner to additional economic hardship.

**(4) Harm to the public if the use remains beyond the abatement period;  
and**

As seen in the aerial photo of the vicinity below, the subject property is surrounded by residential uses and Newport Harbor High School across the street. However, it should also be noted that the nonresidential use of this property was established prior to annexation and has not proven to be incompatible or detrimental to the neighborhood. It is anticipated that the continued dental office use will not have any negative impact on the residential uses or school use in the vicinity.



**(5) Cost and feasibility of relocating the use to another site.**

The applicant's submittal indicates that the relocation of the present use would be costly since there is no comparable building within the vicinity. Consequently, relocation would result in a loss of clientele and could result in a prolonged loss of revenue as clientele is reestablished in a new location. In addition, the costs associated with the dental equipment and office improvements would also be lost or not fully recovered by relocation.

Recommendation

As discussed in Finding and Considerations section above, the applicant has presented information and a request to extend the abatement period for a minimum of ten years. Staff recommends that the request for the extension be approved for ten years based on the following findings and considerations:



1. That the applicant would suffer significant economic hardship as a result of the abatement requirement, since this is the owner's primary revenue source and he occupies the residential unit. Additionally, tenant improvements performed and costs incurred in pursuit of the dental clientele will be lost and not easily recoverable since there are no commercial locations in close proximity of the subject property.
2. One year is not adequate to amortize the property owner's investment, especially since the dental office provides the property owner's primary income. An abatement period of ten years (December 15, 2021) is appropriate to allow the owner to maintain the flow of income and to avoid an unconstitutional taking of the property.
3. That the property became nonconforming in 1956 when the area was annexed, and the City Council adopted Ordinance No. 795 which established the Land Use Designation and the Zoning Designation (Single-Family Residential Use, R-1).
4. That the building is suitable for conversion from the existing commercial use to provide an expansion of the existing residential unit within the existing structure, without displacing the owner from the residence during construction.
5. That the existing mixed-use building (dental office) is located in an area that is occupied by residential uses and a high school across the street. There are no other commercial or nonresidential uses in the vicinity. However, it is anticipated that the continued nonresidential use of a portion of the mixed-use building will not have a negative impact on the uses in the vicinity.
6. That the mixed-use building has been in place for 63 years and has not posed any negative impact on the neighboring uses.
7. That the relocation of the nonresidential use would be costly and would result in a loss of clientele, and could result in a prolonged loss of revenue as clientele is reestablished in a new location.

## **CONCLUSION**

Based on the information submitted by the applicant, adequate justification has been presented to extend the period of abatement. Therefore, in accordance with the provisions of Section 20.38.100 of the NBMC, the Hearing Officer may approve the request for extension of the abatement period based on the Findings and Consideration and testimony presented at the hearing. It is recommended that the Hearing Officer take the following action;

- Adopt the attached Resolution, based on the findings and considerations discussed in this report, approving the Abatement Period Extension to ten years (See Attachment No. 1).



Environmental Review

The project is categorically exempt under Section 15301, of the California Environmental Quality Act (CEQA) Guidelines - Class 1 (Existing Facilities).

Public Notice

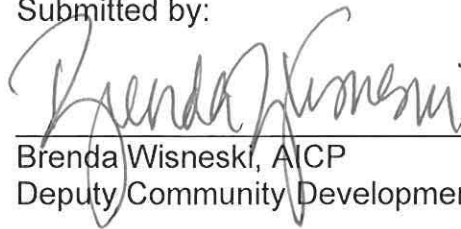
Notice of this hearing was published in the Daily Pilot, mailed to property owners within 300 feet of the property and posted at the site a minimum of 10 days in advance of this hearing, consistent with the Municipal Code. Additionally, the agenda for this meeting was posted at City Hall and on the City website.

Prepared by:



Javier S. Garcia, AICP  
Senior Planner

Submitted by:



Brenda Wisneski, AICP  
Deputy Community Development Director

**ATTACHMENTS**

- NO. 1 Draft Resolution Approving the Abatement Extension Request
- NO. 2 Applicant's Extension Application
- NO. 3 Site Photos
- NO. 4 Modification Permit No. 340, Project Plans, June 15, 1971

DRAFT RESOLUTION APPROVING  
THE ABATEMENT PERIOD EXTENSION  
601 IRVINE AVENUE  
(PA2010-147)

ATTACHMENT No. 1

RESOLUTION NO. HO 2011- \_\_\_\_

**A RESOLUTION OF A HEARING OFFICER OF THE CITY  
OF NEWPORT BEACH APPROVING THE ABATEMENT  
EXTENSION PERIOD FOR THE PROPERTY LOCATED AT  
601 IRVINE AVENUE (PA 2010-147)**

**WHEREAS**, Chapter 20.38.100 of the Newport Beach Municipal Code (NBMC) requires nonconforming nonresidential uses in residential zoning districts to be abated and terminated upon the expiration of time periods identified by the NBMC. Following the issuance of an Abatement Order, Chapter 20.38.100 provides that a property owner may request an extension of the abatement period in order, to amortize a property owner's investment in the property and avoid an unconstitutional taking of property; and

**WHEREAS**, an application was filed on behalf of Dr. Frankenberger, the property owner and tenant, with respect to property located at 601 Irvine Avenue, and legally described as a portion of Lot 18, Newport Heights Tract, requesting an extension of the abatement period specified by the Newport Beach Municipal Code (NBMC) Section 20.38.100, (Abatement Periods). If granted, the extension will allow the continued operation of an existing commercial use for ten years (December 15, 2021). The property is located in the R-1 Zoning District (Single-Unit Residential), where such nonresidential uses are not permitted; and

**WHEREAS**, a public hearing was held on December 15, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the NBMC and other applicable laws. Evidence, both written and oral, was presented and considered at this meeting; and

**WHEREAS**, the hearing was presided over by Hon. John C. Woolley, retired Judge (California Superior Court, Orange County), Hearing Officer for the City of Newport Beach; and

**WHEREAS**, the findings and considerations of Section 20.38.100 (D.4) of the NBMC and facts in support of the findings and considerations are as follows:

- 1. The length of the abatement period is not appropriate considering the owner's investment in the use;**

Facts in Support of Finding: The one year abatement period specified by the Municipal Code is not of sufficient duration to amortize the property owner's investment, especially since the dental office provides the primary income. The applicant indicates that a minimum abatement period of ten years (December 15, 2021) is necessary to recover his investment in the property and to avoid an unconstitutional taking of the owner's property.

- 2. The length of time the use was operating as a nonconforming use justifies the extension of the abatement period beyond the code specified one year.**

Facts in Support of Finding: The building was constructed in 1948 as a mixed-use building. It has included a nonresidential use and dwelling unit since its original construction. The property was annexed to the city in 1956. The building and mixed-use have been nonconforming for the last 55 years. Therefore, an extension to the one-year abatement period is justified due to the significant length of time that the nonconforming use has been operating before becoming subject to abatement.

- 3. The existing structure is suitable for conversion to an alternate use, as an expansion of the existing residential unit.**

Facts in Support of Finding: The current portion of the building occupied by the dentist office is suitable for an expansion of the existing residential use without extensive demolition, or major renovation. An expansion of the existing residential use would conform to current Municipal Code requirements pertaining to floor area and parking (two-car garage exists on site).

- 4. No harm to the public will result if the nonresidential use remains beyond the one year abatement period.**

Facts in Support of Finding: The existing mixed-use was established 63 years ago, prior to annexation and has not proven to be incompatible or detrimental to the neighborhood. It is anticipated that the continued dental office use will not have any negative impact on the residential uses or school use in the vicinity.

- 5. The cost and feasibility of relocating the use to another site cannot be accommodated within the code specified one year abatement period.**

Facts in Support of Finding: The relocation of the present use would be costly since there is no storefront unit or comparable building located in the vicinity. Consequently, relocation would result in a loss of clientele and could result in a prolonged loss of revenue as clientele is re-established in a new location. In addition, the costs associated with the improvements made to the interior of the structure to accommodate the dental office would also be lost or not fully recovered by relocation.

**WHEREAS**, this activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also

covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines. It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and therefore it is not subject to CEQA.

**NOW THEREFORE, BE IT RESOLVED:**

**Section 1.** The Hearing Officer of the City of Newport Beach hereby approves the requested Abatement Period Extension (PA2010-147), subject to the findings and considerations set forth above.

**Section 2.** The Abatement Period Extension for the property located at 601 Irvine Avenue, and legally described as a Portion of Lot 18, Newport Heights Tract, is hereby extended and will expire on December 15, 2021, at which time all nonresidential use of the property shall cease or the building be demolished, unless an additional extension of the abatement period is granted; or an appropriate change in the Zoning District, and the General Plan Land Use Designation are approved and adopted prior to that date; or a change to the Zoning Regulations pertaining to nonconforming uses or their abatement are approved and adopted prior to that date

**Section 3.** This action shall become final and effective fourteen (14) days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20, Planning and Zoning, of the Newport Beach Municipal Code.

**APPROVED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2011.**

By: \_\_\_\_\_  
Hon. John C. Woolley, retired Judge  
(California Superior Court, Orange County)  
Hearing Officer for the City of Newport Beach

**ATTEST:**

\_\_\_\_\_  
City Clerk

APPLICANT'S EXTENSION APPLICATION  
601 IRVINE AVENUE  
(PA2010-147)

ATTACHMENT No. 2



# Abatement Period Extension Application

RECEIVED BY

## Planning Department

3300 Newport Boulevard, Newport Beach, CA 92663  
(949) 644-3200 Telephone | (949) 644-3229 Facsimile  
[www.newportbeachca.gov](http://www.newportbeachca.gov)

PLANNING DEPARTMENT

OCT 22 2010

<b>Property Owner/Applicant</b> Name: <u>Dr. Arnold Frankenberger</u> Mailing Address: <u>601 Irvine Avenue</u> <u>Newport Beach, CA 92663</u> Phone: (949) <u>646-8822</u> Fax: (949) <u>645-5663</u> Email Address: <u>thetoothfactory@yahoo.com</u>	<b>Contact (if different) CITY OF NEWPORT BEACH</b> Name: <u>Dennis D. O'Neil</u> Mailing Address: <u>O'Neil LLP</u> <u>19900 MacArthur Blvd., Suite 1050, Irvine, CA 92612</u> Phone: (949) <u>798-0734</u> Fax: (949) <u>798-0511</u> Email Address: <u>dneil@oneil-llp.com</u>
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## Owner's Affidavit

(I) (We) Dr. Arnold Frankenberger depose and say that (I am) (we are) the owner(s) of the property (ies) involved in this application. (I) (We) further certify, under penalty of perjury, that the foregoing statements and answers herein contained and the information herewith submitted are in all respects true and correct to the best of (my) (our) knowledge and belief.

Signature(s) Dennis D. O'Neil

Date 10/21/10

NOTE: An agent may sign for the owner if written authorization from the record owner is filed with the application.

Please answer the questions below. Attach additional sheets, if necessary.

1. Please describe how abatement of the use at this time relates to your investment in the use.

I own the building located at 601 Irvine Avenue and occupy approximately 940 sq. ft. as my dental office and reside in the remaining 1,550 sq. ft. of the building. I have invested over \$55,000 in office improvements to enable me to provide dental services for my patients. To replace my office use would require me to purchase an office condominium at great expense if such an office condominium is ever available in the general area.  
I would suffer potential significant damages caused by loss of patients, patient inconvenience and loss of good will which would result from the relocation of my dental practice.

2. How long has the use been operating?

I have been practicing general dentistry at 601 Irvine Avenue since 1982.

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3. Please describe the suitability of the structure for an alternative use.

The 940 square foot dental office is improved with structural facilities to accommodate the provision of dental services for patients. The office space is not suitable for residential uses without extensive and costly remodeling.

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4. Please describe way there would be no harm to the public if the use remains beyond the abatement period.

I have never received any complaints from neighboring property owners or anyone else concerning traffic, parking, noise or any nuisance problems associated with the operation of my dental office at 601 Irvine Avenue. The six parking spaces at the corner on my lot at Irvine and 15th provide good visibility for traffic circulation and thereby creates a public benefit in terms of safety for pedestrians and vehicle movement in this area. Also, the existing use of my property is a good example of a live-work building limiting the need for vehicle travel and conserving more productive use of my time.

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5. Please describe the cost and feasibility of relocating the use to another site.

See answer to Question No. 1.

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6. Is there any other evidence relevant to the determination of whether an extension of the abatement period is required to avoid an unconstitutional taking of property?

Ordinance No. 2008-05 adopted by the Newport Beach City Council on January 22, 2008, reducing the time to abate or terminate a non-conforming use, may have been enacted to target group homes in residential districts conducting alcohol and drug rehabilitation programs. My long-term use of the property at 601 Irvine Avenue for my dental office and residence does not remotely fall into that category. The answers I have provided to these questions support my request for a ten-year extension of time to abate the non-conforming use for my dental office. Enforcing the provisions of Ordinance No. 2008-05 as applied to my dental office would not result in any public benefit and would constitute a taking of a productive use of my property and deny me the ability to earn a living without providing just compensation.

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SITE PHOTOS  
601 IRVINE AVENUE  
(PA2010-147)



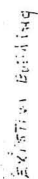
VIEWS FROM IRVINE AVENUE AND 15<sup>TH</sup> STREET

ATTACHMENT No. 3

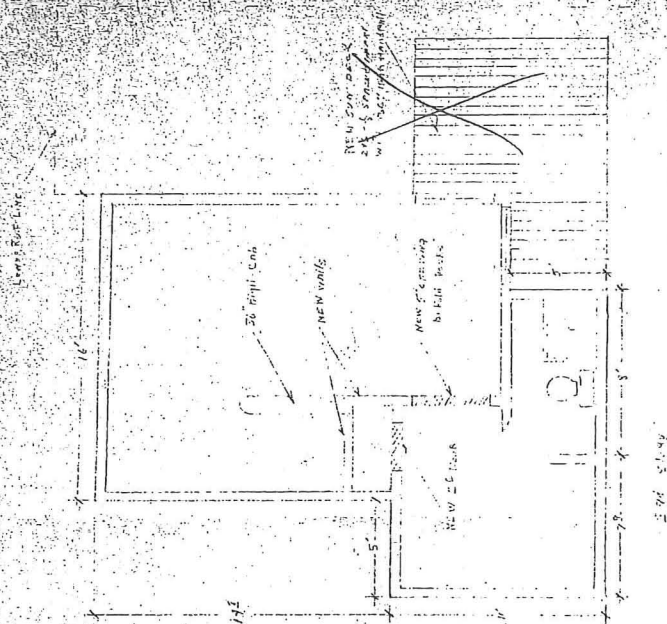
MODIFICATION PERMIT NO. 340,  
PROJECT PLANS, JUNE 15, 1971

601 IRVINE AVENUE  
(PA2010-147)

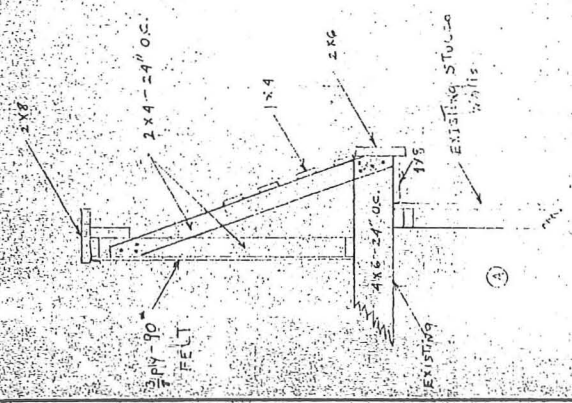
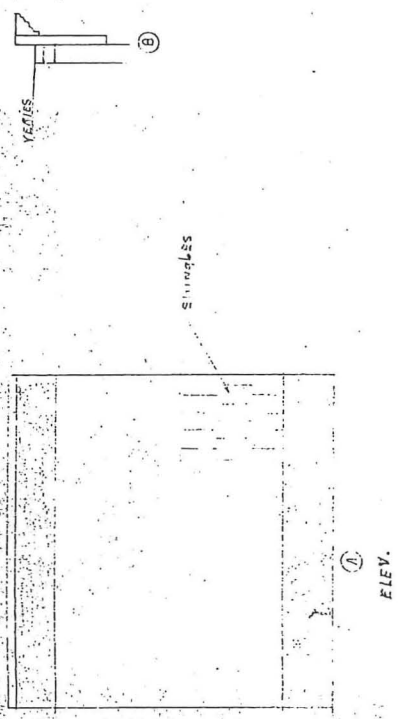
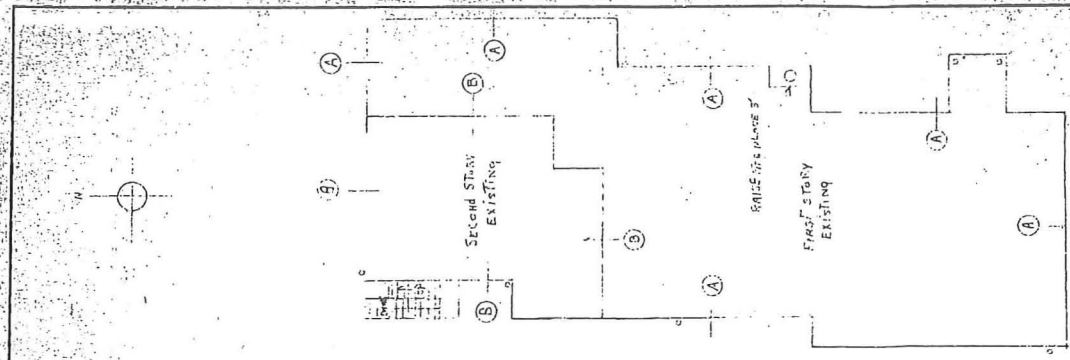
ATTACHMENT No. 4



(A) Deep ceiling to 8'

[illegible]

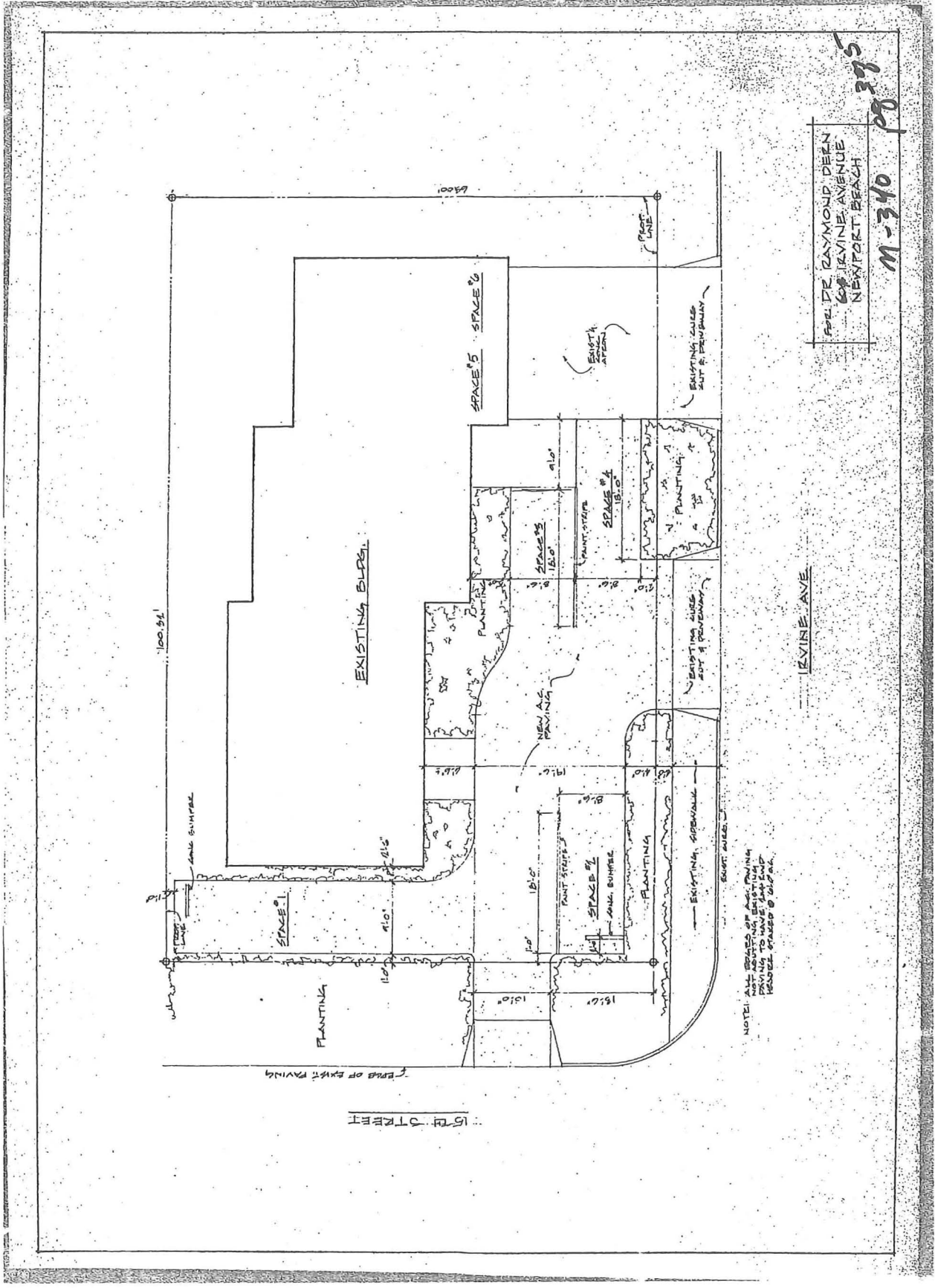
56101 OK-W



601 IRVINE NEWPORT BEACH	
SCALE:	APPROVED BY:
DATE: 5-22-72	DESIGNED BY: KEK
	REVIEWED BY:

R. L. BIRD - BIRD  
 KARL E. HENDALL GEN. CONTRACTOR  
 1880 1/2  
 1880 1/2





FELIX RAYMOND DEEN  
 608 IRVINE AVENUE  
 NEWPORT BEACH

# NOTE: MATERIAL LIST

MOREA IRIODES	1 GALLON	9	EUGENIA COMPACTA	1 GALLON	2
JUNIPERUS ARABIDA	1 GALLON	7	EUCALYPTUS POLYANTHEMUS	5 GALLON	6
RYNCHOSPELUM DAS.	1 GALLON	9	HIBISCUS 'CROWN'	5 GALLON	4
LIRIOPE VARIGATA	2 GALLON	8	JUNIPERUS 'SEA GREEN'	5 GALLON	3
CARISCA TUTTLEI	1 GALLON	20	FIGUS RETUSA	20' BOX	4
			PYRUS KAWAZAMI	15 GALLON	1
HEX ROTUNDA	5 GALLON	4	HEDERA HANNI	PLANTS or 12	14
DIERKONIA ANTIPTICA	5 GALLON	3	TUFF ROCK	SIZE AS SHOWN	2
PODOCARPUS MARI	5 GALLON	8	PLANTING BEDDING	2 CUBIC YARDS	12

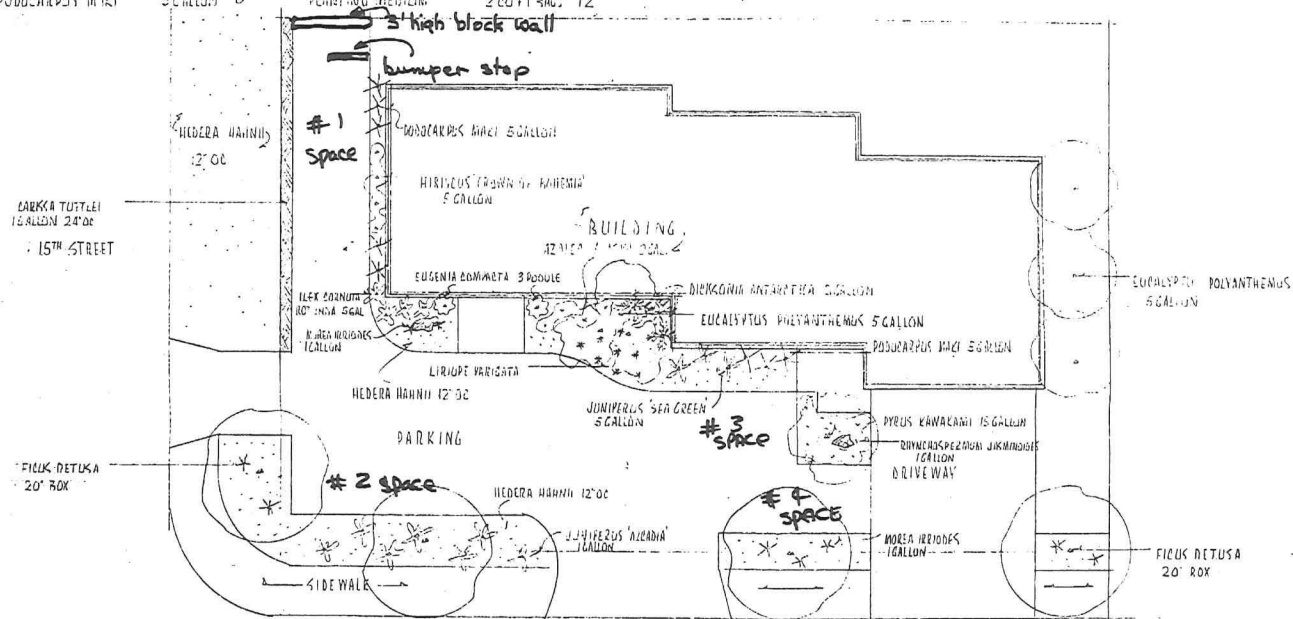
SOIL PREPARATION: PER 1000 SQ. FT.:

3 CUBIC YARDS DECOMPOSED REDWOOD

50 POUNDS IRON SULPHUR

10 CUBIC FEET NITROGENOUS

TO BE ROTOTILLED TO A DEPTH OF NOT  
LESS THAN 2"



BARRY D. McLEAN  
LANDSCAPE DESIGNER  
NEWPORT BEACH, CALIF.  
PHONE 6450645

DR. RAYMOND DERN  
601 IRVINE AVE. N.B.

SCALE - 1/8" = 1'-0"

DRAWING 1 OF 1

M-340 10495

# NOTE: MATERIAL LIST

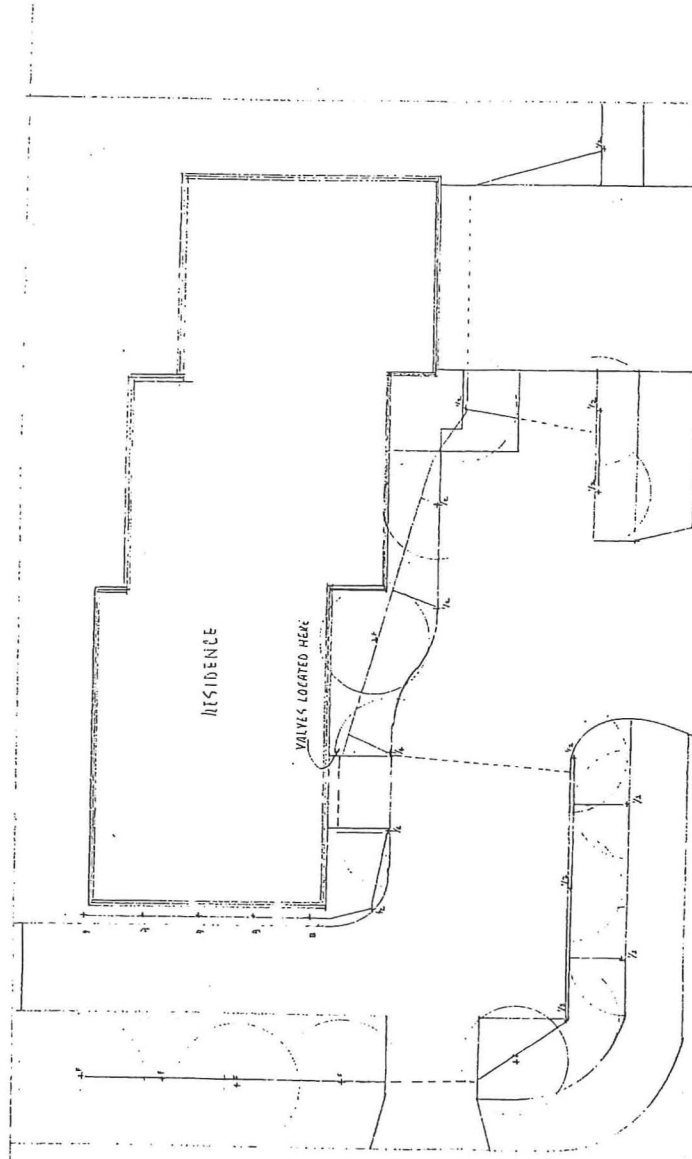
1/2" SPRAY BRASS ADJUSTABLE HEADS - 6

1/4" " " " " 13

BURRLEI HEADS - 2

3/4" BRASS ANTI-SIPHON VALVES - 5

SCHEDULE 40 PVC - 3



SCALE 1"=20'

IRVINE AVE

IRRIGATION  
LAYOUT

M-340 pg 595



**CITY OF NEWPORT BEACH  
HEARING OFFICER STAFF REPORT**

December 15, 2011, Hearing  
Agenda Item 2

**SUBJECT:** Rawlins Property Abatement Period Extension - (PA2011-032)  
1441 Superior Avenue and  
1455 Superior Avenue "J"

**APPLICANT:** Keisker & Wiggle Architects

**PLANNER:** Javier S. Garcia AICP, Senior Planner  
(949) 644-3206, [jgarcia@newportbeachca.gov](mailto:jgarcia@newportbeachca.gov)

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**PROJECT SUMMARY**

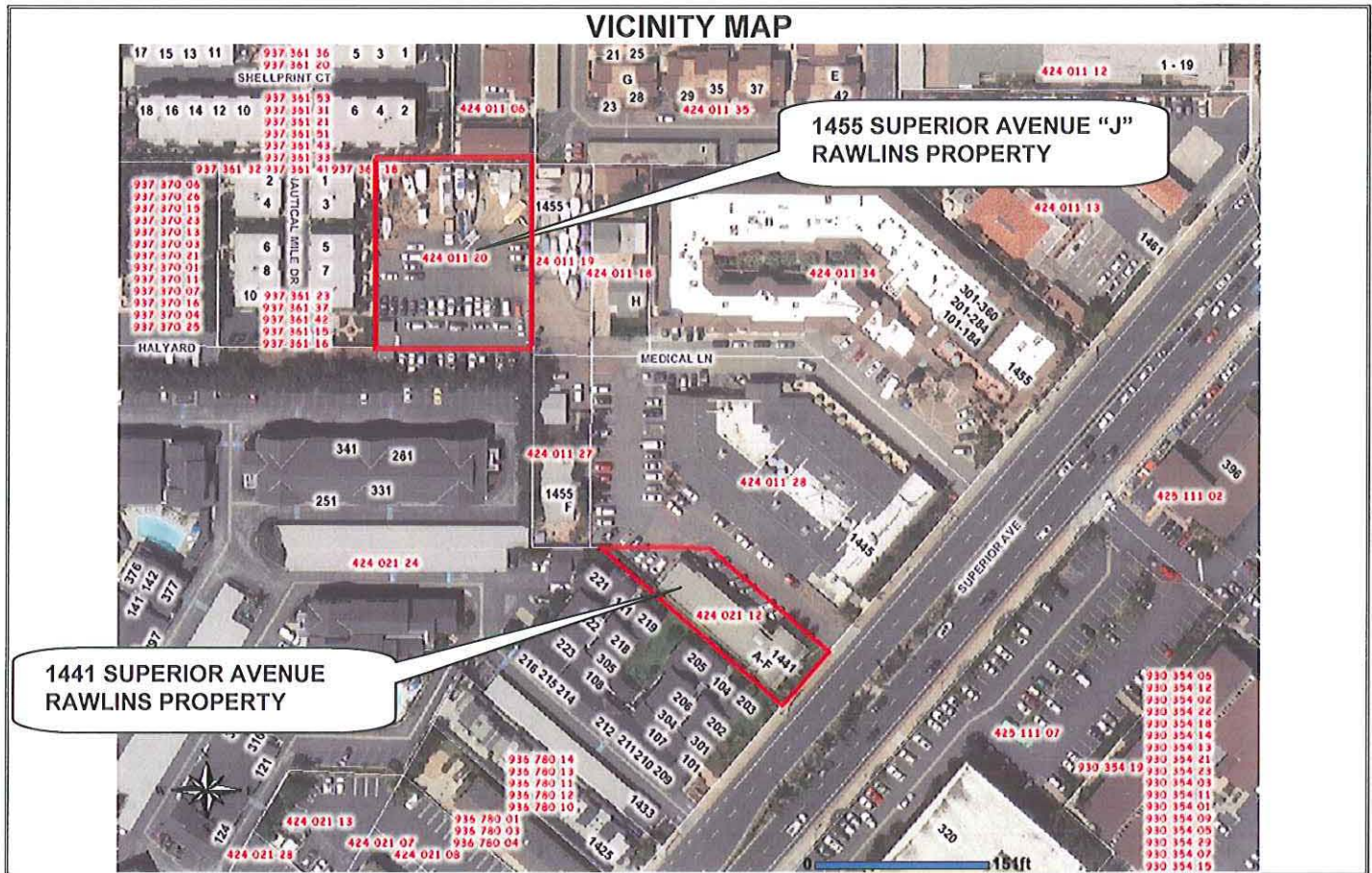
Request to extend the abatement period of a nonconforming nonresidential uses located in a residential district. The subject property is located in the Multiple-Unit Residential District (RM 2420) and is occupied by an 8,233 square foot medical office building (1441 Superior Avenue) and a vacant lot utilized for boat storage purposes (1455 J Superior Avenue). No new development or construction is proposed at this time. The property owner has requested an extension of the abatement period from one year to ten years.

**RECOMMENDATION**

Staff recommends the Hearing Officer conduct a public hearing, receive testimony from the applicant, the city staff, and members of the public. At the conclusion of the public hearing, it is recommended that the Hearing Officer:

1. Adopt the attached Resolution for the property located at 1441 Superior Avenue, based on the findings and considerations discussed in this report, approving the Abatement Period Extension to ten years, December 15, 2021 (See Attachment No. 1).
2. Adopt the attached Resolution for the property located at 1455 J Superior Avenue, based on the findings and considerations discussed in this report, approving the Abatement Period Extension to December 31, 2013 (See Attachment No. 2).





LOCATION:	GENERAL PLAN:	ZONING:
1441 AND 1455 J SUPERIOR AVE	RM (Multiple-Unit Residential)	RM (2420) (Multi-Unit Residential)
SURROUNDING USES: North, West and South:	RM (Multiple-Unit Residential)	RM -2420-(Multi-Unit Residential)
East:	OM (OFFICE – MEDICAL)	CO-M (Commercial Office – Medical)

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## INTRODUCTION

### Project Setting

The subject properties are located on the easterly side of Superior Avenue in what is known as the County Triangle in the Newport Mesa Area of the city. It is bounded by residential uses to the northwest and southwest, and commercial/medical office uses to the northeast and southeast.

### Project Description

The applicant requests an extension of the abatement period of the nonconforming nonresidential uses located in the Multiple-Unit Residential District (RM 2420). The property at 1441 Superior Avenue is occupied by a two-story, 8,233 square-foot medical/commercial office building with several commercial tenants. The property at 1455 Superior Avenue "J" is a vacant lot which is utilized as a boat storage facility. The property owner has requested an extension of the abatement period to ten years for both properties.

### Background

Information submitted by the applicant and available in city records indicate the building located at 1441 Superior Avenue was constructed in 1959 and was owned by a family member of the property owner.

On February 13, 1962, the City Council adopted Ordinance No. 989 that re-designated the zoning of the subject properties from Unclassified District (U District) to the Multi-Family Residential District (R-3) to bring it consistent with Land Use Element of the General Plan.

On November 9, 1992, the City Council adopted Ordinance No. 92-45 which changed the zoning of the subject property at 1441 Superior Avenue and other adjacent properties from the Multi-Family Residential District (R-3 (2178) to the APF District (Administrative, Professional, Financial Commercial) to bring it consistent with Land Use Element of the General Plan.

On June 27, 1994, the City Council adopted Ordinance No. 94-30 that re-designated the zoning of the subject property at 1455 J Superior Avenue and other adjacent properties from the Multi-Family Residential (R-3) District to the Administrative, Professional, Financial Commercial (APF) District to bring it consistent with Land Use Element of the General Plan.

On July 25, 2006, the Newport Beach City Council adopted Resolution No. 2006-76 approving a comprehensive update to the Newport Beach General Plan ("General Plan Update"), which changed the land Use Designation of the subject properties from APF



(Administrative, Professional, Financial Commercial) District to RM 2420 (Multiple-Unit Residential 18 DU/AC) District.

On January 28, 2008, the City Council adopted Ordinance No. 2008-05, which in addition to other Zoning Code changes, established the maximum time period for the abatement and termination of nonconforming uses in residential districts. However, determinations of nonconformity could not be made until the finalization of the City's Local Coastal Plan (LCP), which occurred on July 14, 2009, and the subsequent Zoning Code Update which was effective November 25, 2010 which delayed the implementation of the abatement provisions.

On October 25, 2010, the City Council adopted a Comprehensive Update to the Zoning Code (Newport Beach Municipal Code Title 20, NBMC) bringing consistency between the Zoning Code and the Land Use Element of the General Plan. The result of that action rendered several properties nonconforming, including existing commercial uses located within residential districts, which in accordance with Ordinance No. 2008-05 became subject to abatement in accordance with the following Section of Chapter 20.38 of the NBMC:

20.38.100 Abatement Period.

- C. Residential zoning districts involving a structure. In residential zoning districts or in an area where residential uses are allowed in planned community districts or specific plan districts, a nonconforming use of land involving a structure shall be discontinued as follows:
  - 1. Abatement period. A nonconforming use of land involving a structure in a residential zoning district shall be discontinued on the earliest date as follows:
    - a. Within one year; or
    - b. Upon the expiration of the term of a lease on the property. Any lease shall be the last lease entered into for the subject property prior to December 7, 2007; or
    - c. Upon the expiration of a current operating license that is required by State law.

The City sent letters to all known properties with uses that are subject to abatement. The abatement order for the subject properties were issued on January 14, 2011. Staff met with many of the owners of property that are subject to abatement. Staff explained to those owners the options available to them to remedy their individual situations. Those remedies include conversion of use or development to a residential use; request for extension of the abatement period; and/or request to amend the General Plan, Coastal Land Use Plan (where applicable) and Zoning Code to allow the continuation of the commercial use. In the case of the subject application, the owner chose to pursue an extension of the abatement period to amortize the investment of the current improvements on the subject property.

## **DISCUSSION**

### *General Plan*

The Land Use Element of the General Plan generally guides the future development of the City and would generally allow the continuation of legally established structures and uses; and does not specify requirements for abatement of nonconforming uses. The Zoning Code is the regulatory tool that implements and regulates the provisions of the General Plan.

### *Zoning Code*

To make the subject properties consistent with the Zoning Code would require the abatement of the nonresidential uses. However, the Zoning Code allows for a procedure to grant an extension of the abatement period for the continued use of the existing building and use. The approval authority for the extension lies with the Hearing Officer in accordance with the provisions of Section 20.38.100C 4b of the NBMC. The Hearing Officer is also required to conduct a public hearing on the request in compliance with Chapter 20.62 of the NBMC.

### **Findings and Considerations:**

In accordance with the provisions of Chapter 20.38 of the NBMC, the Hearing Officer, by resolution, shall approve, conditionally approve, or deny the request for an extension to the abatement period. The resolution shall include: findings of fact; evidence presented of economic hardship arising from the abatement proceedings; the nonconformity's impact on the community; and other factors that may affect the length of the abatement period required to avoid an unconstitutional taking.

In accordance with the provisions of Section 20.38.100 (C-4c), the Hearing Officer in reviewing an application for an extension to the abatement period shall consider the following:

- (1) Length of the abatement period in relation to the owner's investment in the use;
- (2) Length of time the use was operating prior to the date of nonconformity;
- (3) Suitability of the structure for an alternative use;
- (4) Harm to the public if the use remains beyond the abatement period; and
- (5) Cost and feasibility of relocating the use to another site.

The applicant has submitted information in support of the request (Attachment No. 3). Staff has reviewed the information submitted by the applicant and has summarized it

below to address the findings and considerations for each of the two properties involved, that the Hearing Officer may use in making his determination.

**PROPERTY 1, 1441 Superior Avenue**

**(1) Length of the abatement period in relation to the owner's investment in the use.**

According to the property owner, the office building has occupied the site for the past 52 years. Current tenant leases extend to as late as June 30, 2013, including options. The owner may suffer economic hardship if required to abate any of the uses prior to expiration of the longest current lease. However, the owner has requested an abatement period extension of ten years, as discussed below.

**Lease Summary**

The property owner also owns the building next door at 1445 Superior Avenue which is occupied by a skilled nursing facility and is a conforming use. The lease of the skilled nursing facility expires on December 31, 2020. The property owner suggests future development opportunities would be maximized by combining the three properties. Therefore, they seek to maintain the nonconforming uses until the lease expires for the skilled nursing facility.

The property owner's ability to fund the potential future project that could incorporate the properties at 1441, 1445 and 1455 J Superior Avenue could be affected by the loss of income resulting from the abatement of any of the uses that currently occupy the subject properties and the 1445 Superior Ave property.

The one year abatement period specified by the Municipal Code is not of sufficient duration to amortize the property owner's investment, especially since the current lease for 1445 Superior Avenue has nine years left. The information submitted by the applicant indicates that an extension of 10 years for the abatement of the current uses is necessary to avoid an unconstitutional taking of the applicant's property. Subsequently, the ten year period would allow the current tenants opportunity to vacate the building.

**(2) Length of time the use was operating prior to the date of nonconformity.**

According to county records, the building was constructed in 1959 as a commercial building and maintained as such. On November 9, 1992, the City Council adopted Ordinance No. 92-45 which changed the zoning of the subject property at 1441 Superior Avenue from the (R-3-2178 (Multi-Family Residential) District to the APF (Administrative, Professional, Financial Commercial) District to bring it consistent with Land Use Element of the General Plan.

The property became nonconforming with the General Plan in 2006, 5 years ago, when the City Council adopted Resolution No. 2006-76 approving the "General Plan Update". The existing structure and use conformed to the Land Use Element of the General Plan for the prior 47 years; or was nonconforming and not subject to abatement.

**(3) Suitability of the structure for an alternative use.**

The building could be modified to accommodate other commercial or nonresidential uses. However, the current building is not suitable for conversion from the existing commercial use to a residential building without demolishing and building new, or major renovation to provide adequate living areas and residential parking. Any new residential use would have to comply with all current municipal requirements, including height, floor area and parking. The current designations would allow up to three dwelling units and require six garage parking spaces and two visitor parking spaces.

The time frame to obtain funding and to design and process documents for the construction of a comprehensive project that would occupy the subject properties and possibly the 1445 Superior Avenue property could not feasibly be accomplished within the one year abatement period specified by the Zoning Code. Additionally, the loss of revenue due to abatement, during the processing of the new project, would subject the property owner to additional economic hardship.

**(4) Harm to the public if the use remains beyond the abatement period.**

As seen in the aerial photo on Page 9, the Rawlins Property is in an area that is occupied by other nonresidential uses; including office, medical office (across the street) and a skilled nursing facility. It is anticipated that the continued commercial use of the subject property is compatible with the surrounding uses and will not have a negative impact or pose harm on the neighboring residential and nonresidential uses in the vicinity. The commercial office use continues to serve persons that reside and work in the area. Photos of the site as viewed from Superior Avenue are attached (Attachment No. 4).

A neighbor to the west has raised concern related to traffic and aesthetics related to the boat storage use (discussed later in this report). The neighbor indicates that the owner of the subject property has diverted traffic by means of an ingress/egress easement, as described in the attached letter. However, staff has advised the neighbor that the issues related to the easement are a civil matter and not under review or consideration of the application request to extend the abatement period for the boat storage use.

**(5) Cost and feasibility of relocating the use to another site.**

The applicant's submittal indicates that the relocation of the present nonresidential use would be costly since there are limited numbers of comparable vacant storefront units or buildings within the vicinity. Consequently, relocation of the nonresidential tenants



would result in a loss of long term rental income, especially since a new residential development or another permitted or conditionally permitted use is not proposed in the immediate future.

**PROPERTY 2, 1455 Superior Avenue "J"**

**(1) Length of the abatement period in relation to the owner's investment in the use.**

The vacant lot is currently utilized as a boat storage facility with a lease term that will expire on December 31, 2013, including lease options. The property owner has requested an extension of the abatement period of ten years as discussed previously in the lease summary on page 6 of this report. The use of the site for boat storage has required no investment by the property owner for any physical structures. As a vacant lot before the boat storage use was introduced, the cost of lot maintenance would be minimal. According to the owner, the extension of the boat storage lease will maintain rental income which helps to offset the taxes and maintenance costs of the surrounding parcels owned by the family.

**(2) Length of time the use was operating prior to the date of nonconformity.**

There are no records indicating the use of the vacant parcel. The use of the property for the boat storage is a nonresidential use and therefore subject to abatement. Staff has attached aerial photos of the subject properties for the years between 2001 and 2011 (Attachment No. 6), which indicate that the use was established after 2001 but before 2006. The applicant has stated that the boat storage facility was established in 2003. The applicant wishes to continue the boat storage use to honor the existing lease and to allow for extension to the ten year period in conjunction with the neighboring properties and the future development of a larger comprehensive project.

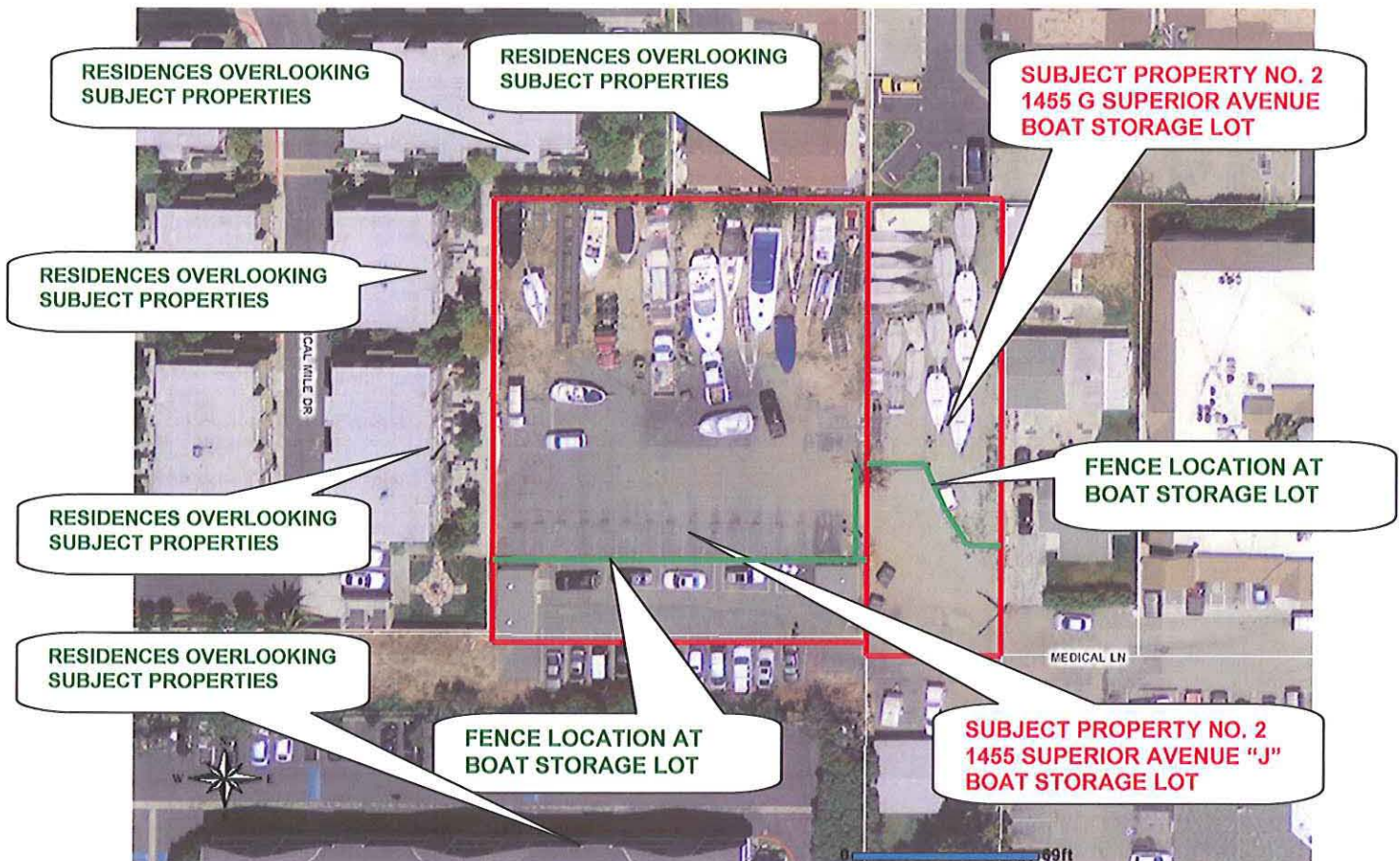
**(3) Suitability of the structure for an alternative use.**

There is no structure on the property and it is therefore suitable for the construction of a new residential project or another permitted or conditionally permitted use. Any new residential use would have to comply with all current municipal requirements, including height, floor area and parking. The current designations would allow up to eighteen dwelling units and require thirty-six garage parking spaces and nine visitor parking spaces on site.

The owner indicates that the continued boat storage use will prevent unauthorized use of the property and is a better alternative than a vacant lot.

**(4) Harm to the public if the use remains beyond the abatement period.**

A neighbor to the west has raised concern that the continued boat storage use of the property is not compatible with the surrounding residential uses, for reasons related to traffic and aesthetics. The neighbor states that the boat storage use is a blight to the area and points to the unsightliness of the views of the neighboring residential use that overlook the subject property, as evidenced by the attached Photo Presentation of the Site (Attachment No. 5).



It should be noted that boat storage use is permitted only in the CM (Commercial Recreational and Marine) Districts of the City. It appears that the use of this property for boat storage has no approvals under any of the previous or current zoning district regulations. Staff therefore recommends that extension of this use be limited to the current lease term and that boat storage be abated after that time. Additionally, in order to reduce the visual impacts during the term of the current lease, it is staff's recommendation that the outdoor storage be limited to boats and vehicles, and that all other storage items, such as parts and construction materials, be removed within 45 days of this approval (Photo Presentation of the Site, Attachment No. 5).

**(5) Cost and feasibility of relocating the use to another site.**

Staff recommends extension of the abatement period to honor the existing lease obligations and that the boat storage use be abated after that. Since there are no structures or other physical improvements, the property owner's cost is minimal, with the exception of the loss of rental income.

**RECOMMENDATIONS**

As discussed in Finding and Considerations section above for each property, the applicant has presented information and a request to extend the abatement period to 10 years for both properties. Staff recommends extension of 10 years for 1441 Superior Avenue; and extension to December 31, 2013 for 1455 Superior Avenue "J":

**Property No. 1, 1441 Superior Avenue**

That the request for the extension for ten years be approved based on the following findings and considerations:

1. That the applicant would suffer significant economic hardship as a result of the abatement requirement, if required to abate the use prior to expiration of the current leases, which could subject the property owner to a potential lawsuit by the current tenants.
2. That one year is not an adequate period of time to amortize the property owner's investment in the property, especially since the current leases vary in duration, and if the neighboring property at 1445 Superior Avenue is considered in conjunction with a larger comprehensive project and which has 9 years remaining in its current lease.
3. That the property became nonconforming in 2006, 5 years ago, when the City Council adopted Resolution No. 2006-76 approving the "General Plan Update".
4. That the building could be modified to accommodate other commercial or nonresidential uses. However, the current building is not suitable for conversion from the existing commercial use to a residential building without demolishing and building new, or major renovation to provide adequate living areas and residential parking.
5. That the property is in an area that is occupied by other nonresidential uses; including office, medical office (across the street) and a skilled nursing facility. It is anticipated that the continued commercial use of the subject property is compatible with the surrounding uses and will not have any negative impact or pose harm on the neighboring residential and nonresidential uses in the vicinity.
6. That the office building has been in operation for over 47 years and has not posed any negative impact on the neighboring uses.



7. That the relocation of the present nonresidential uses that occupy the building would be costly since there are limited numbers of comparable vacant storefront units or buildings within the vicinity. Consequently, relocation of the nonresidential tenants would result in a loss of long term rental income, especially since a new comprehensive residential or expansion of the skilled nursing facility or assisted living facility project is not proposed in the immediate future.
8. That the abatement extension of ten years (December 15, 2021) is appropriate in that it will afford the property owner the ability to amortize the value of the building improvements, and that without the extension of the abatement period, the property owner cannot enter into new leases for the commercial spaces and would suffer an extended period of reduced revenue. Construction to combine this property with the neighboring properties in conjunction with a larger comprehensive project would be adversely affected.

**Property No. 2, 1455 Superior Avenue "J"**

That the request for the extension to the end of the current lease for the boat storage use only (December 31, 2013), be approved based on the following findings and considerations:

1. That the applicant would suffer significant economic hardship as a result of the abatement requirement, if required to abate the use prior to expiration of the current lease, which could subject the property owner to a potential lawsuit by the current tenant.
2. That one year is not an adequate period of time to amortize the property owner's investment in the property, especially since the current lease has an expiration date of December 31, 2013.
3. That the property became nonconforming in 2006, 5 years ago, when the City Council adopted Resolution No. 2006-76 approving the "General Plan Update".
4. That there is no structure associated with this nonresidential use and therefore conversion to a residential building will not require any demolition of existing structures in order to construct a new residential structure.
5. That the boat storage use is located in an area that is occupied by other nonresidential uses; including medical office, and a skilled nursing facility and assisted living facility. However, the continued boat storage use is not compatible with the adjacent residential uses that overlook the property. That abatement in consideration of the existing lease will eliminate the aesthetic impact on the neighboring residential units and protect the property owner from potential lawsuit that could be caused by abatement prior to expiration of the lease term.
6. That there are no discretionary approvals for the boat storage use, and there is no information on the use of the property prior to the current lease to justify an extension beyond the lease term.

7. That the relocation of the boat storage use prior to expiration of the current lease could be costly and would result in a loss of clientele, and could result in a prolonged loss of revenue to the property owner.
8. That the abatement extension to December 31, 2013, is appropriate in that it is consistent with the current lease and the required abatement period specified by Section 20.38.100 C-1.b of the NBMC, as applies to nonresidential uses in residential districts.

## **CONCLUSION**

Based on the information submitted by the applicant, adequate justification has been presented to extend the period of abatement. Therefore, in accordance with the provisions of Section 20.38.100 of the NBMC, the Hearing Officer may approve the request for extension of the abatement period based on the Findings and Consideration and testimony presented at the hearing. It is recommended that the Hearing Officer take the following action;

- Adopt the attached Resolution for the property located at 1441 Superior Avenue, based on the findings and considerations discussed in this report, approving the Abatement Period Extension to ten years, December 15, 2021 (See Attachment No. 1).
- Adopt the attached Resolution for the property located at 1455 Superior Avenue "J", based on the findings and considerations discussed in this report, approving the Abatement Period Extension to December 31, 2013 (See Attachment No. 2).

## **Environmental Review**

The project is categorically exempt under Section 15301, of the California Environmental Quality Act (CEQA) Guidelines - Class 1 (Existing Facilities).

## **Public Notice**

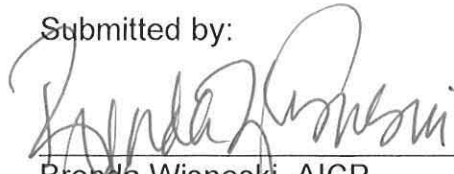
Notice of this hearing was published in the Daily Pilot, mailed to property owners within 300 feet of the property and posted at the site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting which was posted at City Hall and on the City website.



Prepared by:

  
Javier S. Garcia, AICP  
Senior Planner

Submitted by:

  
Brenda Wisneski, AICP  
Deputy Community Development Director

**ATTACHMENTS**

- No. 1 Draft Resolution Approving the Abatement Extension Request, 1441 Superior Avenue
- No. 2 Draft Resolution Approving the Abatement Extension Request, 1455 Superior Avenue "J"
- No. 3 Applicant's Extension Application and Supporting Information
- No. 4 Site Photos 1441 Superior Avenue
- No. 5 Photo Presentation, 1455 Superior Avenue "J"
- No. 6 Aerial Photos 2011, 2010, 2009, 2006, AND 2001
- No. 7 Letter in Opposition from a Neighbor to the West, Newport Knolls HOA

DRAFT RESOLUTION APPROVING  
THE ABATEMENT PERIOD EXTENSION  
1441 SUPERIOR AVENUE  
(PA2011-032)

ATTACHMENT No. 1

RESOLUTION NO. HO 2011- \_\_\_\_

**A RESOLUTION OF A HEARING OFFICER OF THE CITY  
OF NEWPORT BEACH APPROVING THE ABATEMENT  
EXTENSION PERIOD FOR THE PROPERTY LOCATED AT  
1441 SUPERIOR AVENUE (PA 2011-032)**

**WHEREAS**, Chapter 20.38.100 of the Newport Beach Municipal Code (NBMC) requires nonconforming nonresidential uses in residential zoning districts to be abated and terminated upon the expiration of time periods identified by the NBMC. Following the issuance of an Abatement Order, Chapter 20.38.100 provides that a property owner may request an extension of the abatement period in order, to amortize a property owner's investment in the property and avoid an unconstitutional taking of property; and

**WHEREAS**, an application was filed on behalf of The Rawlins Family Trust, the owner of property located at 1441 Superior Avenue, and legally described as Portion of Lot 819, First Addition to Newport Mesa Tract, requesting an extension of the abatement period specified by the NBMC Section 20.38.100. If granted, the extension will allow the continued operation of existing commercial use for ten years from the date of the Hearing Officer's approval (December 15, 2021). The property is located in the RM (2420) Zoning District, where such nonresidential uses are not permitted; and

**WHEREAS**, a public hearing was held on December 15, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the NBMC and other applicable laws. Evidence, both written and oral, was presented and considered at this meeting; and

**WHEREAS**, the hearing was presided over by Hon. John C. Woolley, retired Judge (California Superior Court, Orange County), Hearing Officer for the City of Newport Beach; and

**WHEREAS**, the findings and considerations of Section 20.38.100 (C.4(c)) of the NBMC and facts in support of the findings and considerations are as follows:

- 1. The length of the abatement period is not appropriate considering the owner's investment in the use;**

Facts in Support of Finding: The one year abatement period specified by the Municipal Code is not of sufficient duration to amortize the property owner's investment. The information submitted by the applicant indicates that an extension of 10 years for the abatement of the current uses is necessary to avoid an unconstitutional taking of the applicant's property. Subsequently, the ten year period would allow the owner to transition the current tenants out of the building to accommodate the future project. An

extension period for the term of the lease is necessary to avoid economic hardship that will result if the owner is required to abate the use prior to expiration of the lease.

- 2. The length of time the use was operating prior to the date of nonconformity justifies the extension of the abatement period beyond the code specified one year.**

Facts in Support of Finding: The property became nonconforming with the General Plan in 2006, 5 years ago, when the City Council adopted Resolution No. 2006-76 approving the "General Plan Update". The existing structure and use conformed to the Land Use Element of the General Plan for the prior 47 years; or was nonconforming and not subject to abatement.

- 3. The existing structure is not suitable for conversion to an alternate use.**

Facts in Support of Finding: The building could be modified to accommodate other commercial or nonresidential uses. However, the current building is not suitable for conversion from the existing commercial use to a residential building without demolishing and building new, or major renovation to provide adequate living areas and residential parking.

- 4. No harm to the public will result if the nonresidential use remains beyond the one year abatement period.**

Facts in Support of Finding: The property is located in an area that is occupied by other nonresidential uses; including office, medical office (across the street) and a skilled nursing facility. It is anticipated that the continued commercial use of the subject property is compatible with the surrounding uses and will not have any negative impact or pose harm on the neighboring residential and nonresidential uses in the vicinity.

- 5. The cost and feasibility of relocating the use to another site cannot be accommodated within the one-year abatement period.**

Facts in Support of Finding: The applicant indicates that the relocation of the present nonresidential uses that occupy the building would be costly since there are limited numbers of comparable vacant storefront units or buildings within the vicinity. Consequently, relocation of the nonresidential tenants would result in a loss of long term rental income, especially since a new comprehensive residential or expansion of the skilled nursing facility or assisted living facility project is not proposed in the immediate future.

**WHEREAS**, this activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines. It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and therefore it is not subject to CEQA.

**NOW THEREFORE, BE IT RESOLVED:**

**Section 1.** The Hearing Officer of the City of Newport Beach hereby approves the requested Abatement Period Extension (PA2011-032), subject to the findings and considerations set forth above.

**Section 2.** The Abatement Period Extension for the property located at 1441 Superior Avenue, and legally described as Portion of Lot 819, First Addition to Newport Mesa Tract, is hereby extended and will expire on December 15, 2021, at which time all nonresidential use of the property shall cease or the building be demolished, unless an additional extension of the abatement period is granted; or an appropriate change in the Zoning District and the General Plan Land Use Designation are approved and adopted; or a change to the Zoning Regulations pertaining to nonconforming uses or their abatement are approved and adopted prior to that date.

**Section 3.** This action shall become final and effective fourteen (14) days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20, Planning and Zoning, of the Newport Beach Municipal Code.

**APPROVED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2011.**

By: \_\_\_\_\_  
Hon. John C. Woolley, retired Judge  
(California Superior Court, Orange County)  
Hearing Officer for the City of Newport Beach

**ATTEST:**

\_\_\_\_\_  
City Clerk



DRAFT RESOLUTION APPROVING  
THE ABATEMENT PERIOD EXTENSION  
1455 SUPERIOR AVENUE "J"  
(PA2011-032)

ATTACHMENT No. 2

RESOLUTION NO. HO 2011- \_\_\_\_

**A RESOLUTION OF A HEARING OFFICER OF THE CITY  
OF NEWPORT BEACH APPROVING THE ABATEMENT  
EXTENSION PERIOD FOR THE PROPERTY LOCATED AT  
1455 SUPERIOR AVENUE "J" (PA 2011-032)**

**WHEREAS**, Chapter 20.38.100 of the Newport Beach Municipal Code (NBMC) requires nonconforming nonresidential uses in residential zoning districts to be abated and terminated upon the expiration of time periods identified by the NBMC. Following the issuance of an Abatement Order, Chapter 20.38.100 provides that a property owner may request an extension of the abatement period in order, to amortize a property owner's investment in the property and avoid an unconstitutional taking of property; and

**WHEREAS**, an application was filed on behalf of The Rawlins Family Trust, the owner of property located at 1455 Superior Avenue "J", and legally described as Portion of Lot 918, First Addition to Newport Mesa Tract, requesting an extension of the abatement period specified by the NBMC Section 20.38.100. If granted, the extension will allow the continued operation of existing boat storage use to December 31, 2013. The property is located in the RM (2420) Zoning District, where such nonresidential uses are not permitted; and

**WHEREAS**, a public hearing was held on December 15, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the NBMC and other applicable laws. Evidence, both written and oral, was presented and considered at this meeting; and

**WHEREAS**, the hearing was presided over by Hon. John C. Woolley, retired Judge (California Superior Court, Orange County), Hearing Officer for the City of Newport Beach; and

**WHEREAS**, the findings and considerations of Section 20.38.100 (C.4(c)) of the NBMC and facts in support of the findings and considerations are as follows:

- 1. The length of the abatement period is not appropriate considering the owner's investment in the use;**

Facts in Support of Finding: The one year is not an adequate period of time to amortize the property owner's investment in the property, especially since the current lease has an expiration date of December 31, 2013.

2. **The length of time the use was operating prior to the date of nonconformity justifies the extension of the abatement period beyond the code specified one year.**

Facts in Support of Finding: This property also became nonconforming with the General Plan in 2006, 5 years ago, when the City Council adopted Resolution No. 2006-76 approving the "General Plan Update". The existing use conformed to the Land Use Element of the General Plan for the prior 47 years; or was nonconforming and not subject to abatement. The use of the property for the storage of boats is a nonresidential use and therefore subject to abatement. The applicant's request to continue the nonresidential use of the parcel to honor the existing lease terms is appropriate in this case.

3. **The existing structure is not suitable for conversion to an alternate use.**

Facts in Support of Finding: There is no structure on this property and is therefore suitable for the construction of a new residential project or expansion of the adjacent skilled nursing facility or the adjacent assisted living facility.

4. **No harm to the public will result if the nonresidential use remains beyond the one year abatement period.**

Facts in Support of Finding: The property is located in an area that is occupied by other nonresidential uses; including office, medical office (across Superior Avenue) and a skilled nursing facility. It is anticipated that the continued boat storage use is not compatible with the adjacent residential uses that overlook the property. That abatement in consideration of the existing lease will eliminate the aesthetic impact on the neighboring residential units and protect the property owner from potential lawsuit that could be caused by abatement prior to expiration of the lease term. Additionally, that the outdoor storage be limited to boats and vehicles, and that all other storage items, such as parts and construction materials, be removed within 45 days of this approval will also reduce the aesthetic impacts on the neighboring residential uses.

5. **The cost and feasibility of relocating the use to another site cannot be accommodated within the one-year abatement period.**

Facts in Support of Finding: The applicant indicates that the relocation of the boat storage use prior to expiration of the current lease could be costly and would result in a loss of clientele, and could result in a prolonged loss of revenue to the property owner.

**WHEREAS**, this activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines. It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and therefore it is not subject to CEQA.

**NOW THEREFORE, BE IT RESOLVED:**

**Section 1.** The Hearing Officer of the City of Newport Beach hereby approves the requested Abatement Period Extension (PA2011-032), subject to the findings and considerations set forth above.

**Section 2.** The Abatement Period Extension for the property located at 1455 Superior Avenue "J", and legally described as Portion of Lot 918, First Addition to Newport Mesa Tract, is hereby extended and will expire on December 31, 2013, at which time all nonresidential use of the property shall cease or the building be demolished, unless an additional extension of the abatement period is granted; or an appropriate change in the Zoning District and the General Plan Land Use Designation are approved and adopted; or a change to the Zoning Regulations pertaining to nonconforming uses or their abatement are approved and adopted prior to that date.

**Section 3.** This action shall become final and effective fourteen (14) days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20, Planning and Zoning, of the Newport Beach Municipal Code.

**APPROVED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2011.**

By: \_\_\_\_\_  
Hon. John C. Woolley, retired Judge  
(California Superior Court, Orange County)  
Hearing Officer for the City of Newport Beach

**ATTEST:**

\_\_\_\_\_  
City Clerk

APPLICANT'S EXTENSION APPLICATION  
1441 SUPERIOR AVENUE AND  
1455 SUPERIOR AVENUE "J"  
(PA2011-032)

ATTACHMENT No. 3





# Abatement Period Extension Application

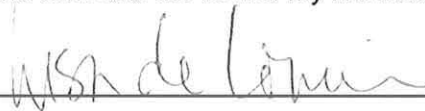
## Planning Department

3300 Newport Boulevard, Newport Beach, CA 92663  
(949) 644-3200 Telephone | (949) 644-3229 Facsimile  
[www.newportbeachca.gov](http://www.newportbeachca.gov)

<b>Property Owner/Applicant</b> Name: RAWLINS FAMILY TRUST  Mailing Address: 1000 San Marino Avenue San Marino, CA 91108  Phone: (818) 954-1990 Fax: ( ) _____ Email Address: richandlisa1000@att.net	<b>Contact (if different)</b> Name: LISA DE LORMIER  Mailing Address: same _____  Phone: ( ) _____ Fax: ( ) _____ Email Address: _____
---	--

### Owner's Affidavit

I **Lisa deLormier** depose and say that I am the owner of the properties involved in this application. I further certify, under penalty of perjury, that the foregoing statements and answers herein contained and the information herewith submitted are in all respects true and correct to the best of my knowledge and belief.

Signature(s)  Date 12/1/11

NOTE: An agent may sign for the owner if written authorization from the record owner is filed with the application.

**Please answer the questions below. Attach additional sheets, if necessary.**

**Site Address:** 1441 Superior Avenue (Office Building)  
1445 J Superior Avenue (Vacant Parcel with Boat Storage)

1. Please describe how abatement of the use at this time relates to your investment in the use and the abatement period requested.

My mother's estate owns the subject office building at 1441 Superior Avenue as well as the adjacent property at 1445 Superior, my original family home at 1455 F (a conforming residential use), and a vacant parcel 1455 J that currently has boat storage. I have attached an exhibit showing the affected parcels. There is a convalescent hospital operating at 1445 Superior, which is a conforming use under the new zoning. They have an existing lease that runs until December 31, 2020, only if we give the tenant 12-months notice that that we intend to discontinue operation of the facility. Otherwise, they have an option to extend the Lease term. Having had discussions about the redevelopment of these properties over the last few years with the City Planning Staff, we have the desire to eventually redevelop the properties as a continuous care community, working off of our existing convalescent hospital use. That project would be conforming with the new zoning designation. However, our tenants in 1441 have received notices from the City that they must now relocate their businesses to another location before the end of 2011, which has severely impacted the financial viability of the business operation of our properties. Without the continued operation of these uses, we will be unable to maintain the properties or fund the predevelopment costs of our new development. We are hereby requesting an extension of the abatement period for ten years. This time period will allow our leases to run their course in conjunction with the lease on 1445, as well as proceed

forward with our plans of redeveloping our properties into conforming uses. Our intention was to move forward with submitting and processing the development plans at the time of my mother's passing, because of estate planning obligations. When we submitted our request for an abatement extension, my mother was expected to live for many years. However, she passed away unexpectedly in October and we are now in the throes of closing her estate.

2. How long has the use been operating?

This property contains a two-story office building, built by my father in 1959. The building has been in continuous operation since that time. Many of our tenants have been in the building for years.

3. Please describe the suitability of the structure for an alternative use.

The office building at 1441 is a two story wood framed structure with no elevator access to the upper floor. Our architect has studied the building and has determined that alternative uses are not viable due to the amount of remodel and upgrade required to address today's code issues. Therefore, until we rebuild to our new master plan, retaining the use as an office building is a critical piece of our financial planning. As currently configured, the office building piece cannot be sold off independently of the other properties because it is not large enough for a building and the required parking. It works well when integrated into the group of properties.

The vacant parcel at 1455J is currently leased for storage of boats. We have had numerous problems with use of the vacant property for living, trash dumping, informal use as a neighborhood skateboard park, and even an unauthorized birthday party. These uses created a nuisance, sights and smells that were unpleasant, and liability for us. The presence of the boats on the lot has caused these issues to go away. The income from the lease allows us to offset the taxes and maintenance fees associated with the property, which in turn will allow us to fund the predevelopment costs of the future plan.

4. Please describe way there would be no harm to the public if the use remains beyond the abatement period.

There is no harm to the public if this building remains as an office building for ten more years. Directly across the street is a three-story medical office building, and all along Superior Avenue are commercial uses. For the adjoining properties, this office building is a good, quiet neighbor which is closed on nights and weekends. Keeping the building occupied will also allow us the ability to maintain the building as we have been doing, keeping it clean and painted.

The continued use of boat storage on the vacant lot precludes the other negative uses. If the boat lease is terminated, those other uses will likely return, and our ability to deal with them will be limited due to the lack of available funds. So, the public would benefit from the existing use continuing until such time as the new development can proceed. It should be noted that the vacant lot is basically land locked, accessed off of an easement from Monrovia and is not visible from Superior or Monrovia.

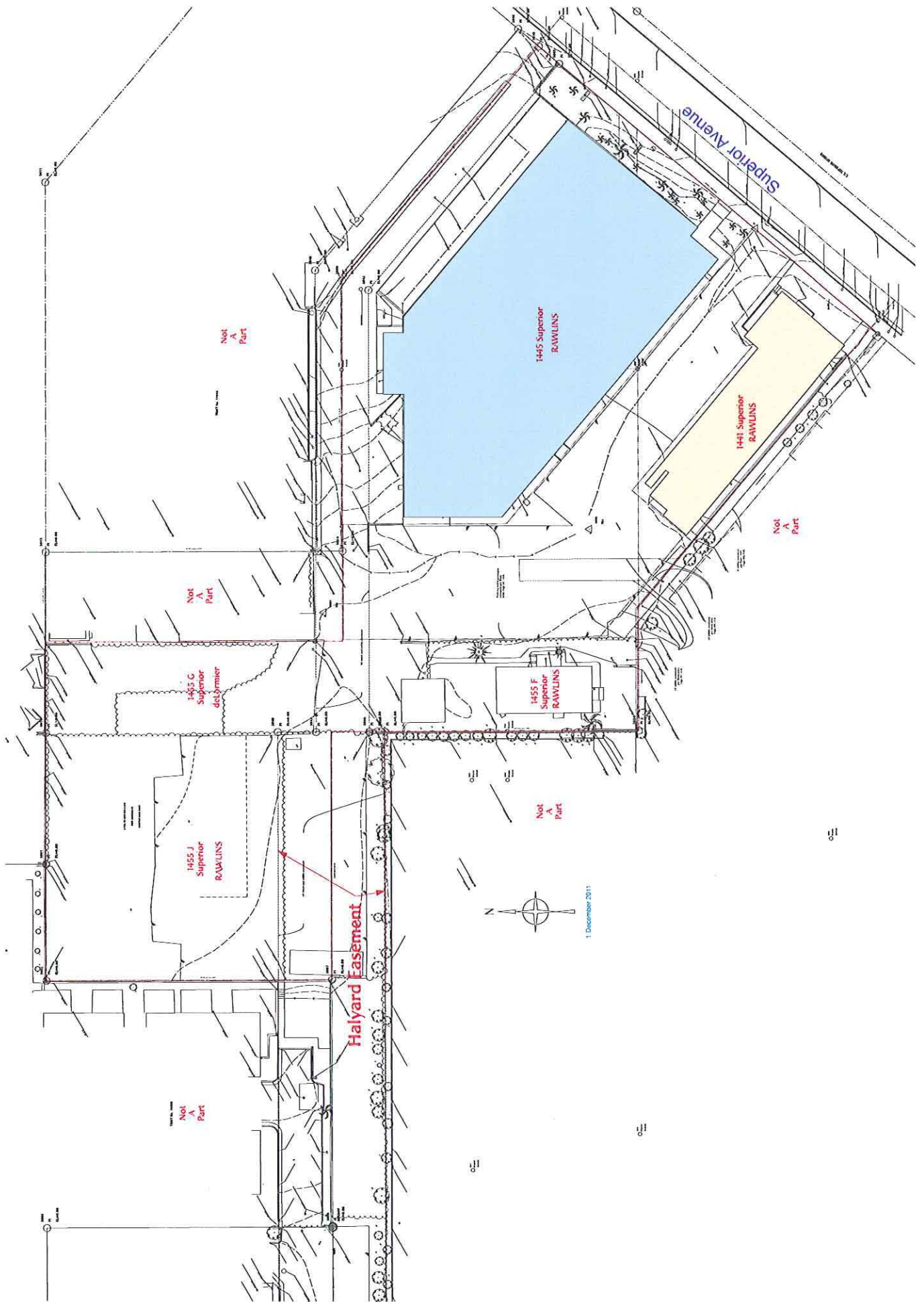
5. Please describe the cost and feasibility of relocating the use to another site.

We do not have any other properties that we could relocate our tenants into as all of our adjacent properties are also in the new residential zone. Should the tenants be forced to relocate and abandon our building, the loss of income would not allow us to keep up the maintenance of the building.

6. Is there any other evidence relevant to the determination of whether an extension of the abatement period is required to avoid an unconstitutional taking of property?

These properties have been in our family for more than 50 years. We have operated and maintained these properties without incident for the entire time. We are dedicated to the eventual redevelopment into a use that conforms to the new zoning designation of multi-family residential, but need the time to make it through the current economy and manage the estate issues that will allow our family to retain ownership and construct a new project. It is our intention to continue to move the redevelopment forward, but until the passing of my mother, we are unable to get a formal approval of the new development because that will alter the value of the properties such that we will be forced to sell them to pay the estate taxes on the increased value. We keep the properties clean well maintained, and due to that have been able to keep many of our tenants for years.

We have approached the redevelopment in a proactive way. Over a year ago we engaged the services of an architect to assist us in the planning process. We have shared our tentative plans with the Planning Staff and have implemented many background steps to prepare for the eventual development application process. If the abatement period is not extended, all of this effort and continued progress will stop, and what is now a well maintained active project will become abandoned and a potential eyesore to the community. The extension will set the stage for what will be a future asset to the entire community.





December 1, 2011

Dear Jay:

I'm glad we are able to go to hearing on this issue, and thank you for your assistance. As you know from our meeting with you in March and with others at the City over the years, we are committed to redeveloping our properties in alignment with the City's General Plan. Our concern is that of timing. When we submitted our request for an abatement extension, my mother was expected for many years. She passed away unexpectedly in October and we are now in the throes of closing her estate.

1441 Superior Avenue is adjacent to our property at 1445, an occupied skilled nursing facility (SNF). Our lease for that SNF expires on December 31, 2020; only if we give the tenant 12-months notice that that we intend to discontinue operation of the facility. Otherwise, they have an option to extend the Lease term. This property is central to our redevelopment planning, in that we will either redevelop our surrounding properties in conjunction with the SNF (a continuous care community, or senior/assisted living), or raze it all and build condominiums. Our preference is to pursue the first scenario, and as you know, we've been working with an architect toward that end.

We can't do much until the SNF Lease term of December, 2020, and given our tenant's right to transition out of their occupancy, our request for a 10 year extension remains unchanged.

Here is the other information you requested:

1455 "G" – the original Lease is dated August 15, 2003, and it expires on August 31, 2013. The Lease terms are extended by amendment to the current Lease, and we have had only one tenant (Newport Balboa Sailing and Seamanship Association) since the Lease's inception.

1441 – the building has 8 suites, and 7 are currently leased. Superior Rehabilitation Center occupies three suites, has been our tenant since 1989 and their current Lease term ends this month. They would like to remain in the space. 1<sup>st</sup> Medical Supply occupies 2 suites and their Lease expires on June 30, 2013. The Social Group occupies one suite and their term ends June 30, 2012, and Premiere Home Health Care occupies one suite and their term ends August 31, 2012.

The income from 1441 is important to us, as stated in our original request letter. As important is what would we do with an empty building? It would make more sense to redevelop it with the SNF, and raze it when and if the SNF is demolished.

Question: You did not mention 1455 "J" (vacant lot) in your email. Is it included in the staff report you are preparing for the hearing?

Thank you – please let me know if I can provide anything further.

Lisa deLormier



SITE PHOTOS  
1441 SUPERIOR AVENUE  
(PA2011-032)



VIEWS OF 1441 SUPERIOR AVE FROM SUPERIOR AVENUE,

ATTACHMENT No. 4

## **PHOTO PRESENTATION**

1455 SUPERIOR AVENUE "J"  
(PA2011-032)

# **ATTACHMENT No. 5**



PHOTO PRESENTATION – 1441 SUPERIOR AVENUE

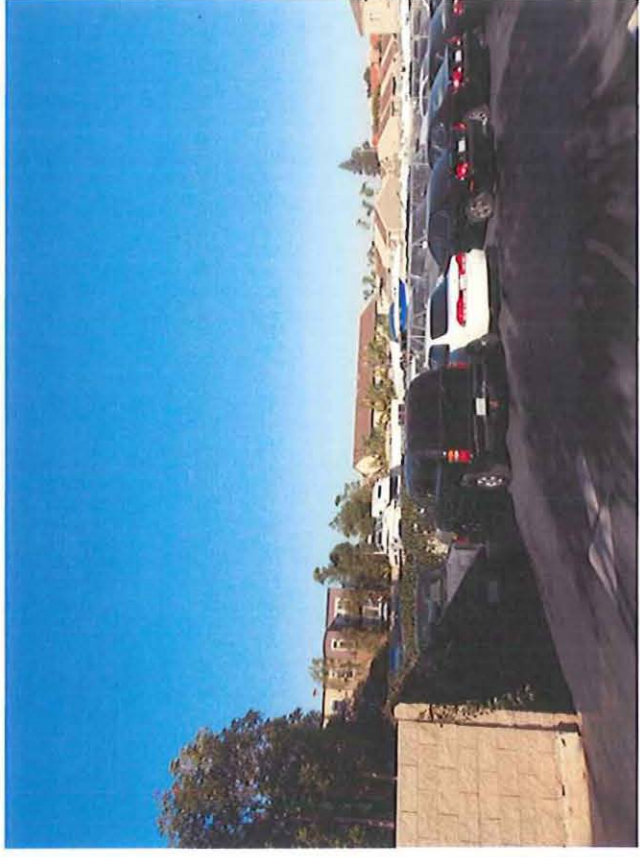
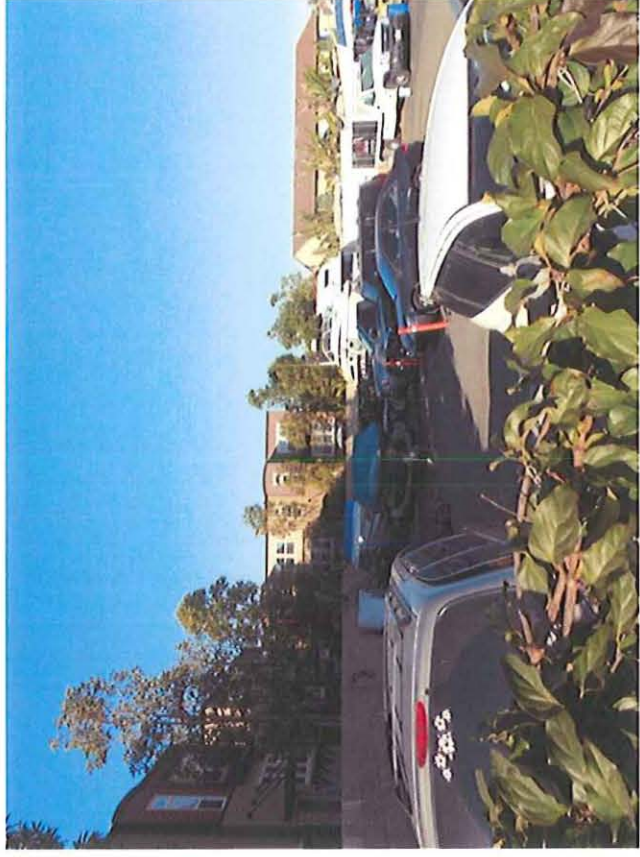
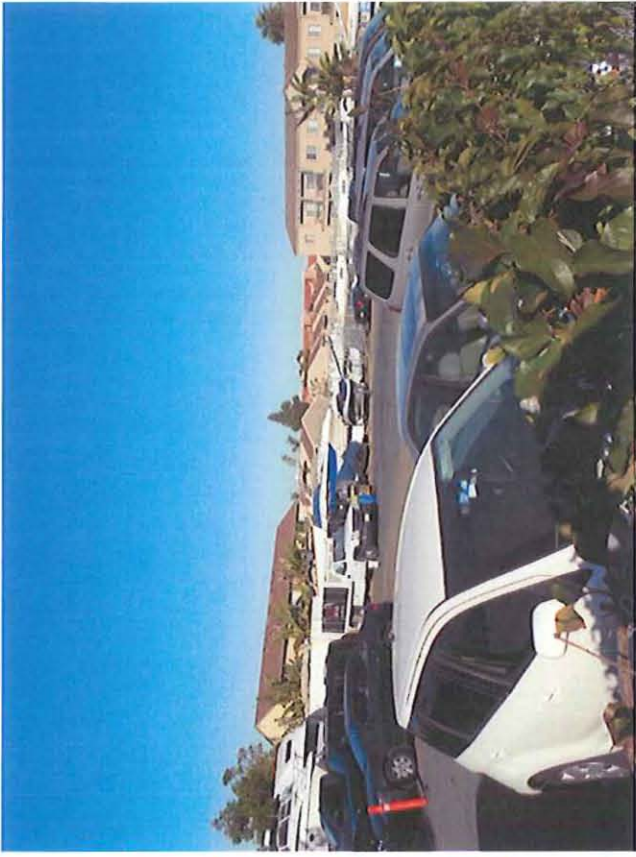
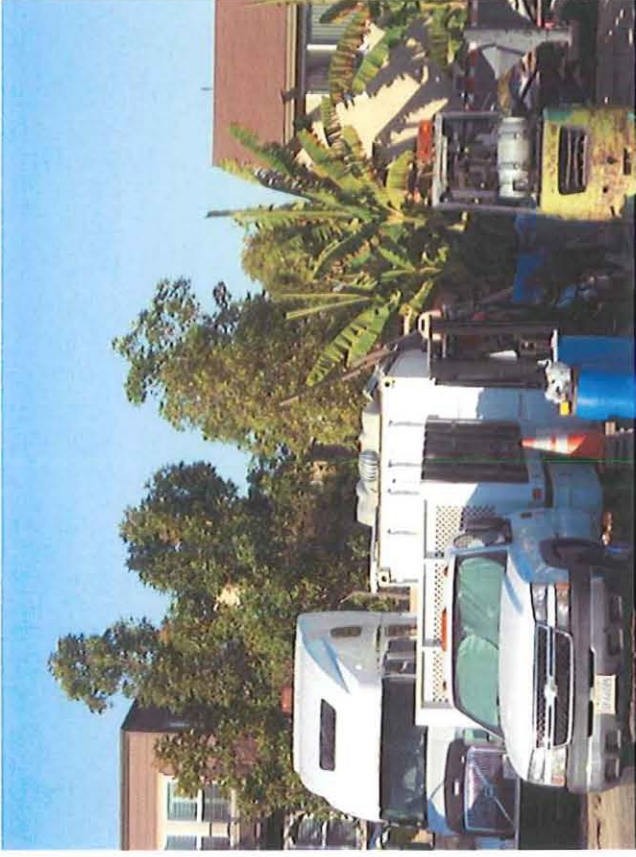
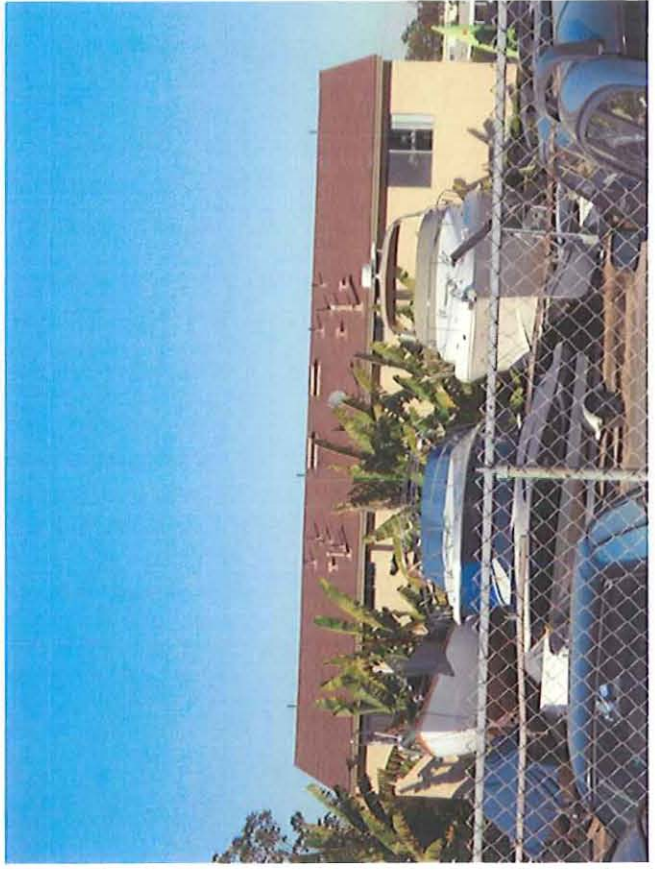
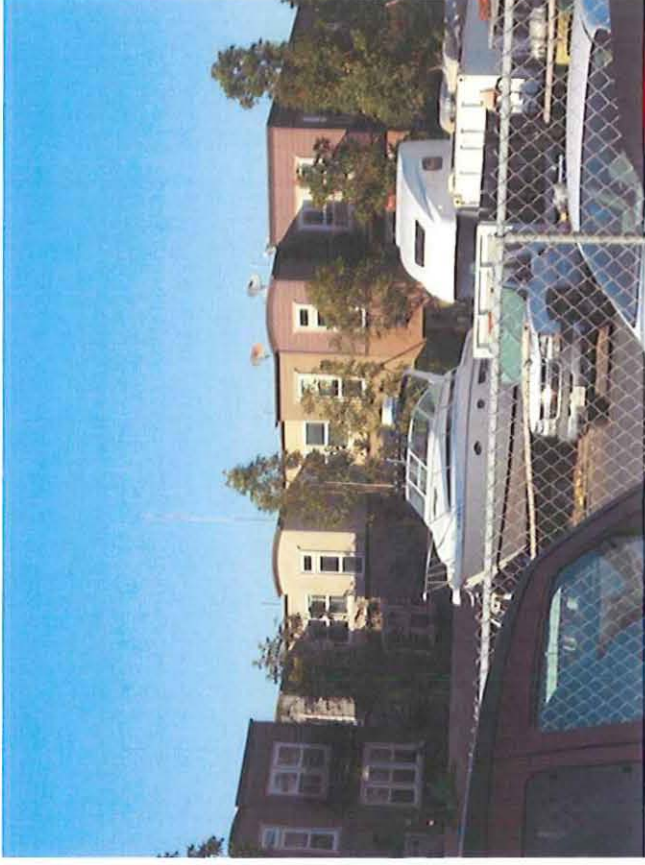




PHOTO PRESENTATION – 1441 SUPERIOR AVENUE









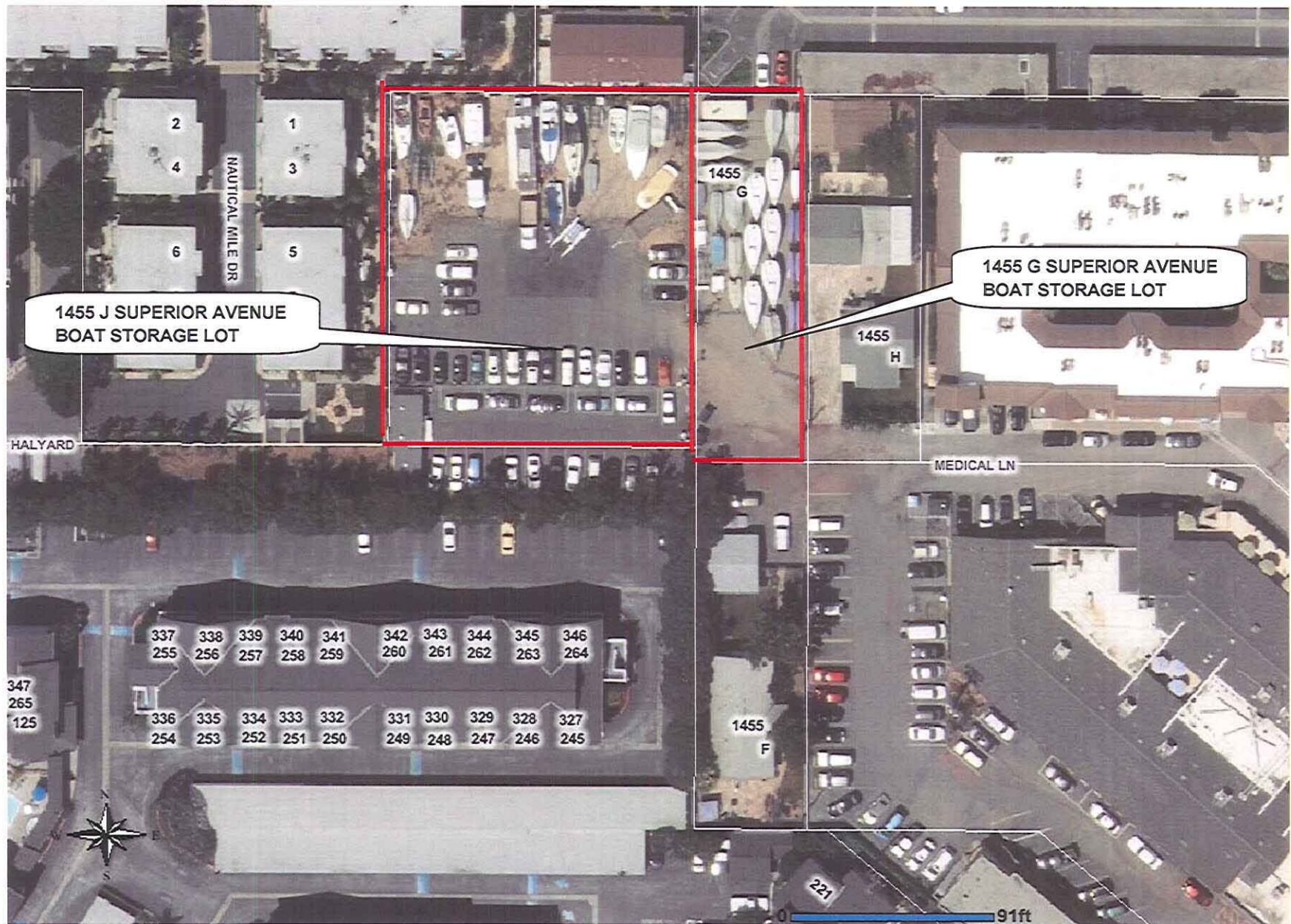
**AERIAL PHOTOS**  
**2011, 2010, 2009, 2006, AND 2001**

1441 SUPERIOR AVENUE AND  
1455 SUPERIOR AVENUE "J"  
(PA2011-032)

**ATTACHMENT No. 6**







2010

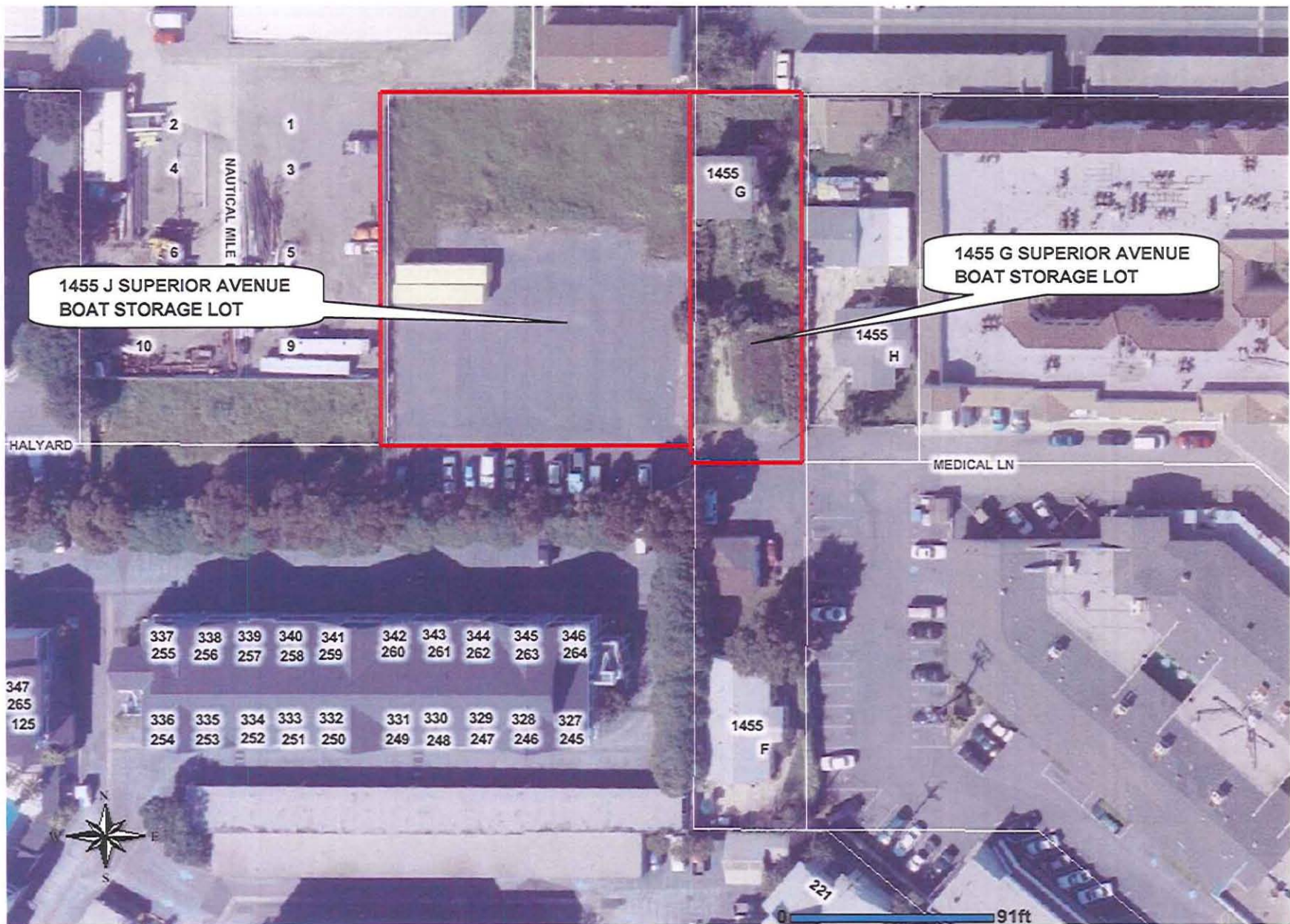












2001

**LETTER IN OPPOSITION FROM  
A NEIGHBOR TO THE WEST,  
NEWPORT KNOLLS HOA**

1441 SUPERIOR AVENUE AND  
1455 SUPERIOR AVENUE "J"  
(PA2011-032)

**ATTACHMENT No. 7**



## Newport Knolls Homeowners Association

A Mutual Benefit Not-For-Profit Corporation  
% AM/PM PROPERTY MANAGEMENT, INC.  
16882 Gothard St. #E, Huntington Beach, CA 92647  
Fax (714) 848-0542 (714) 963-4500  
[www.ampmproperties.com](http://www.ampmproperties.com)

December 7, 2011

Jay Garcia, Senior Planner  
City of Newport Beach  
3300 Newport Boulevard, Building C, 2<sup>nd</sup> Floor  
Newport Beach, CA 92663

Re: Project File No: PA2011-033 and PA2011-032

Dear Mr. Garcia,

Thank you for meeting with Scott Christian, Lisa Scott and Susan Harris yesterday. Our community of 26 homes is **NOT** in favor of the City of Newport Beach approving the **Abatement Period Extension** for Lisa de Lorimier OR the Rawlins Family Trust.

Listed below are our reasons for this:

- 1) The boat storage is a blight in the area. It is not up to the standards of living in Newport Beach.
- 2) The boat storage decreases our property values.
- 3) The boat storage reduces our style of living as we must see this unattractive area.
- 4) The Rawlins Family met with our Board of Directors and told us the City of Newport Beach required access to the boat storage from Monrovia through our residential homes and required them to use our private driveway. They said the City would no longer permit them to use Superior Avenue to access the boat storage. **According to the City, that is totally FALSE and incorrect.**
- 5) This past summer the Rawlins Family built an asphalt area behind One Nautical Mile so they could connect from Monrovia Avenue, use our driveway to access the new asphalt area and get to the boat storage area. Rather than using it as access for the boat yard they require the employees of their office buildings, and other facilities on Superior to park their vehicles on 1441 and 1455J Superior Avenue. Their employees then walk through a gate in the chain link fence constructed by the Rawlins Family to go to work.
- 6) This additional traffic is a "Health and Safety" issue for our residents. We have eight (8) homes whose garages open directly onto our 30' driveway which these employees now use. Our residents have small children who play in that area as well. The employees must navigate an "S" curve from our driveway to connect 30 feet behind One Nautical Mile to the *new asphalt*. When leaving work, they must again traverse the "S" curve. It is only a matter of time before the buildings are damaged or worse, someone is hurt, or killed. Having this additional traffic is not safe!
- 7) The City approved a new college to be built on Monrovia. We are thrilled with this and understand this will create new traffic in our area. Adding additional traffic from the Superior Avenue facilities will exacerbate this issue needlessly.

Should the City again grant the boat storage again, we request

- a) Approval should be limited to a term not to exceed 3 years.
- b) Require all vehicles associated with the Rawlins/de Lorimier Properties to use Superior Avenue as ingress and egress.
- c) If the City approves the Abatement, require the Rawlins/de Lorimier owners to improve the 30' area to the south of Newport Knolls that abuts The Beach House at their own expense and use that area for ingress and egress instead of our driveway. That would reduce the liability to our property and more importantly, protect the residents of our community.

Thank you for your attention to this matter.

Sincerely,

Betsy Malone, President



# HARLE | JANICS | KANNEN

a law corporation  
10979

December 13, 2011

VIA ELECTRONIC TRANSMISSION  
[jgarcia@newportbeachca.gov](mailto:jgarcia@newportbeachca.gov)  
AND HAND DELIVERY

Jay Garcia, Senior Planner  
City of Newport Beach  
3300 Newport Boulevard, Building C, 2<sup>nd</sup> Floor  
Newport Beach, CA 92663

RECEIVED BY  
COMMUNITY  
DEC 13 2011  
DEVELOPMENT  
CITY OF NEWPORT BEACH

Re: Rawlins Abatement Period Extension; Project File No. PA2011-032  
DeLorimier Abatement Period Extension; Project File No. PA2011-033

Dear Mr. Garcia:

As legal counsel for the One Nautical Mile Association ("Association"), I have been asked to submit to the City of Newport Beach the Association's objections to the above-referenced abatement period extension requests relating to the boat storage yards. The One Nautical Mile community consists of 42 homes adjacent to the properties located at 1455 Superior Avenue G and J. The following sets forth the Association's objections:

1. The boat storage yards are a blight to the neighborhood and not up to the aesthetic standards of Newport Beach.
2. The boat storage yards decrease the One Nautical Mile property values.
3. The boat yards are being used for parking vehicles of employees in neighboring commercial buildings, resulting in increased traffic and safety concerns.
4. The boat yards are very noisy late at night and early in the morning, including running engines and compressors, sanding, and other maintenance and repair noises. The Newport Beach Police have been called to the area on numerous occasions as a result of the unreasonably loud noise coming from the boat yards.

Metro Center

575 Anton Blvd., Suite 460 | Costa Mesa, California 92626 | ph 714-429-0600 | fx 714-429-0699 | [hjklawfirm.com](http://hjklawfirm.com)

[www.hjklawfirm.com](http://www.hjklawfirm.com)

Jay Garcia, Senior Planner  
City of Newport Beach  
December 13, 2011  
Page 2

Should the City be inclined to grant an extension to the abatement periods, the Association requests no more than a one (1) year extension. Additionally, the Association requests that the boat yard hours be limited to 8:00 a.m. to 8:00 p.m. in order to address the loud noises coming from the boat yards early in the morning and late at night.

Thank you for your consideration to the Association's requests.

Very truly yours,

A handwritten signature in black ink, appearing to read 'KAK', followed by a long horizontal flourish.

Karen A. Kannen

KAK:cmg

cc: Board of Directors, One Nautical Mile Association



**CITY OF NEWPORT BEACH**  
**HEARING OFFICER STAFF REPORT**  
December 15, 2011 Hearing  
Agenda Item 3

**SUBJECT:** Abatement Period Extension – Lisa de Lorimier - (PA2011-033)  
1455 Superior Avenue "G"

**APPLICANT:** Keisker & Wiggle Architets

**PLANNER:** Javier S. Garcia AICP, Senior Planner  
(949) 644-3206, jgarcia@newportbeachca.gov

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**PROJECT SUMMARY**

Application for extension of the abatement period in accordance with Section 20.38.100 of the Newport Beach Municipal Code. The property is currently vacant, but has been utilized for boat storage purposes since 2006. There are no structures on site and no new development or construction is proposed at this time. The applicant wishes to allow the existing nonresidential use to continue for an extended period of time without abatement for a period of 10 years.

**RECOMMENDATION**

Staff recommends the Hearing Officer conduct a public hearing, receive testimony from the applicant, the city staff, and members of the public. At the conclusion of the public hearing, it is recommended that the Hearing Officer:

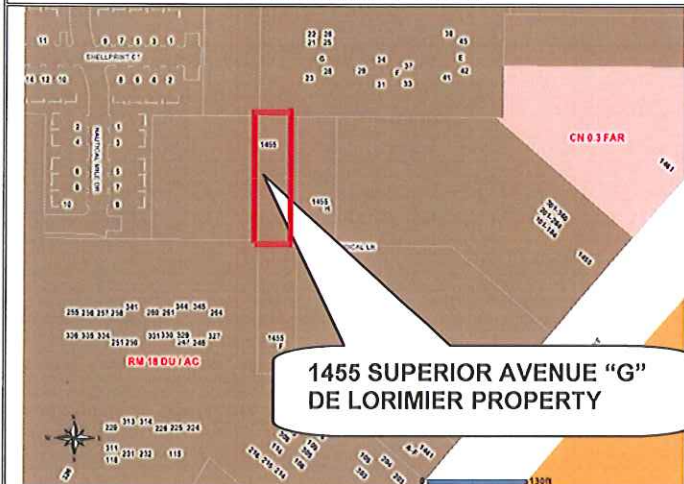
- Adopt the attached Resolution for the property located at 1455 Superior Avenue "G", based on the findings and considerations discussed in this report, approving the Abatement Period Extension to December 31, 2013 (See Attachment No. 1).



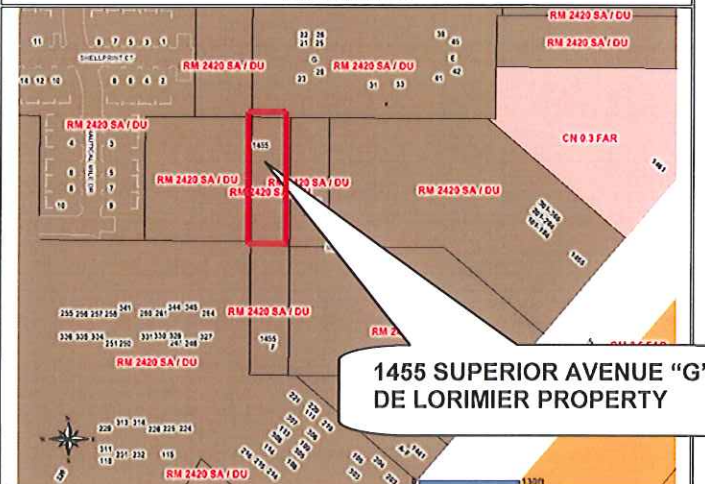
### VICINITY MAP



### GENERAL PLAN



### ZONING



LOCATION:	GENERAL PLAN:	ZONING:
1455 G SUPERIOR AVENUE	RM (Multiple-Unit Residential)	RM (2420) (Multi-Unit Residential)
SURROUNDING : North, West, East, and South:	RM (Multiple-Unit Residential)	RM -2420-(Multi-Unit Residential)
SURROUNDING USES:	Residential to North and South Skilled Nursing Facility to the Southeast; Assisted Living Facility to the West	

## INTRODUCTION

### Project Setting

The subject property is a land locked parcel located east of Superior Avenue in what is known as the County Triangle in the Newport Mesa Area of the city. It is bounded by residential uses to the north and south; a skilled nursing facility to the southeast; and a residential use; and an assisted living facility to the east.

### Project Description

The applicant requests an extension of the abatement period of the nonconforming nonresidential use located in the Multiple-Unit Residential District (RM 2420) which is located at 1455 Superior Avenue "G", a vacant lot utilized as a boat storage facility. The property owner has requested an extension of the abatement period to ten years.

### Background

On February 13, 1962, the City Council adopted Ordinance No. 989 that re-designated the zoning of the subject properties from Unclassified District (U District) to the Multi-Family Residential District (R-3) to bring it consistent with Land Use Element of the General Plan.

On June 27, 1994, the City Council adopted Ordinance No. 94-30 that re-designated the zoning of the subject property at 1455 Superior Avenue "G" and other adjacent properties from the Multi-Family Residential (R-3) District to the Administrative, Professional, Financial Commercial (APF) District to bring it consistent with Land Use Element of the General Plan.

On July 25, 2006, the Newport Beach City Council adopted Resolution No. 2006-76 approving a comprehensive update to the Newport Beach General Plan ("General Plan Update"), which changed the Land Use Designation of the subject properties from APF (Administrative, Professional, Financial Commercial) District to RM 2420 (Multiple-Unit Residential 18 DU/AC) District.

On January 28, 2008, the City Council adopted Ordinance No. 2008-05, which in addition to other Zoning Code changes, established the maximum time period for the abatement and termination of nonconforming uses in residential districts. However, determinations of nonconformity could not be made until the finalization of the City's Local Coastal Plan (LCP), which occurred on July 14, 2009, and the subsequent Zoning Code Update which was effective November 25, 2010 which delayed the implementation of the abatement provisions.

On October 25, 2010, the City Council adopted a Comprehensive Update to the Zoning Code (Newport Beach Municipal Code Title 20, NBMC) bringing consistency between the Zoning Code and the Land Use Element of the General Plan. The result of that action rendered several properties nonconforming, including existing commercial uses located

within residential districts, which in accordance with Ordinance No. 2008-05 became subject to abatement in accordance with the following Section of Chapter 20.38 of the NBMC:

20.38.100 Abatement Period.

- C. Residential zoning districts involving a structure. In residential zoning districts or in an area where residential uses are allowed in planned community districts or specific plan districts, a nonconforming use of land involving a structure shall be discontinued as follows:
  - 1. Abatement Period. A nonconforming use of land involving a structure in a residential zoning district shall be discontinued on the earliest date as follows:
    - a. Within one year; or
    - b. Upon the expiration of the term of a lease on the property. Any lease shall be the last lease entered into for the subject property prior to December 7, 2007; or
    - c. Upon the expiration of a current operating license that is required by State law.

The City sent letters to all known properties with uses that are subject to abatement. The abatement order for the subject property was issued on January 14, 2011. Staff met with many of the owners of property that are subject to abatement. Staff explained to those owners the options available to them to remedy their individual situations. Those remedies include conversion of use or development to a residential use; request for extension of the abatement period; and/or request to amend the General Plan, Coastal Land Use Plan (where applicable) and Zoning Code to allow the continuation of the commercial use. In the case of the subject application, the owner chose to pursue an extension of the abatement period to amortize the investment of the current improvements on the subject property.

## **DISCUSSION**

### *General Plan*

The Land Use Element of the General Plan generally guides the future development of the City and would generally allow the continuation of legally established structures and uses; and does not specify requirements for abatement of nonconforming uses. The Zoning Code is the regulatory tool that implements and regulates the provisions of the General Plan.

### *Zoning Code*

In the case of the subject properties, in order to make them consistent with the Zoning Code, would require the abatement of the nonresidential use on the property which



could result in an 8,250 square-foot vacant lot. However, the Zoning Code allows for a procedure to grant an extension of the abatement period for the continued use of the existing nonresidential use. The approval authority for the extension lies with the Hearing Officer in accordance with the provisions of Section 20.38.100C 4b of the NBMC. The Hearing Officer is also required to conduct a public hearing on the request in compliance with Chapter 20.62 of the NBMC.

Findings and Considerations:

In accordance with the provisions of Chapter 20.38 of the NBMC, the Hearing Officer, by resolution, shall approve, conditionally approve, or deny the request for an extension to the abatement period. The resolution shall include: findings of fact; evidence presented of economic hardship arising from the abatement proceedings; the nonconformity's impact on the community; and other factors that may affect the length of the abatement period required to avoid an unconstitutional taking.

In accordance with the provisions of Section 20.38.100 (C-4c), the Hearing Officer in reviewing an application for an extension to the abatement period shall consider the following:

- (1) Length of the abatement period in relation to the owner's investment in the use;
- (2) Length of time the use was operating prior to the date of nonconformity;
- (3) Suitability of the structure for an alternative use;
- (4) Harm to the public if the use remains beyond the abatement period; and
- (5) Cost and feasibility of relocating the use to another site.

The applicant has submitted information in support of the request (Attachment No. 2). Staff has reviewed the information submitted by the applicant and has summarized it below to address the findings and considerations that the Hearing Officer may use in making his determination.

- (1) Length of the abatement period in relation to the owner's investment in the use.**

The vacant lot is currently utilized as a boat storage facility with a lease term that will expire on August 31, 2013, including lease options. Staff recommends that an abatement extension period to December 31, 2013, will accommodate the current lease term consistent with the extension recommended for the adjacent boat storage facility (1455 Superior Avenue "J"); and is therefore appropriate in this case. However, the property owner has requested an extension of the abatement period of ten years as discussed below.

## Lease Summary

The property owner also owns the building next door at 1445 Superior Avenue and makes reference to the lease of that property occupied by a Skilled Nursing Facility. That lease has 9 years remaining to December 31, 2020 and has requested the ten year abatement period extension partly to accommodate that lease with the tenth year on a month-to-month basis. The applicant wishes to extend/renew the current leases, or the ability to enter into new leases for the properties located at 1441 Superior Avenue, 1455 Superior Avenue "J", and the subject 1455 Superior Avenue "G" to ten years. The justification presented is that the owner would suffer economic hardship if required to abate any of the uses prior to expiration of the longest current lease, and that the longest current lease is associated with the 1445 Superior Avenue property which could be included in the overall project that could occupy all three properties. The property and use of 1445 Superior Avenue is not nonconforming, however, the Hearing Officer may choose to take that information into consideration as a basis to determine the appropriate extension period for the subject property.

The property owner's ability to fund the potential future project that could incorporate the properties at 1441, 1445 and 1455 G and 1455 J Superior Avenue could be affected by the loss of income resulting from the abatement of any of the uses that currently occupy the subject properties and the 1445 Superior Ave property.

The one year abatement period specified by the Municipal Code is not of sufficient duration to amortize the property owner's investment, especially since the current lease for 1455 Superior Avenue "G" has less than two years left. The Hearing Officer may consider the requested 10 year period and may determine a lesser period of time to recover the owner's investment, or greater period of time to ensure avoidance of an unconstitutional taking of property.

### **(2) Length of time the use was operating prior to the date of nonconformity.**

There are no records indicating the use of the vacant parcel. The use of the property for the boat storage is a nonresidential use and therefore subject to abatement. Staff has attached aerial photos of the subject properties for the years between 2001 and 2011 (Attachment No. 4), which indicate that the use was established after 2001 but before 2006. The applicant wishes to continue the boat storage use to honor the existing lease and to allow for extension to the ten year period in conjunction with the neighboring properties and the future development of a larger comprehensive project.

This property became nonconforming with the General Plan in 2006, 5 years ago, when the City Council adopted Resolution No. 2006-76 approving the "General Plan Update". The existing use conformed to the Land Use Element of the General Plan for the prior 47 years; or was nonconforming and not subject to abatement.

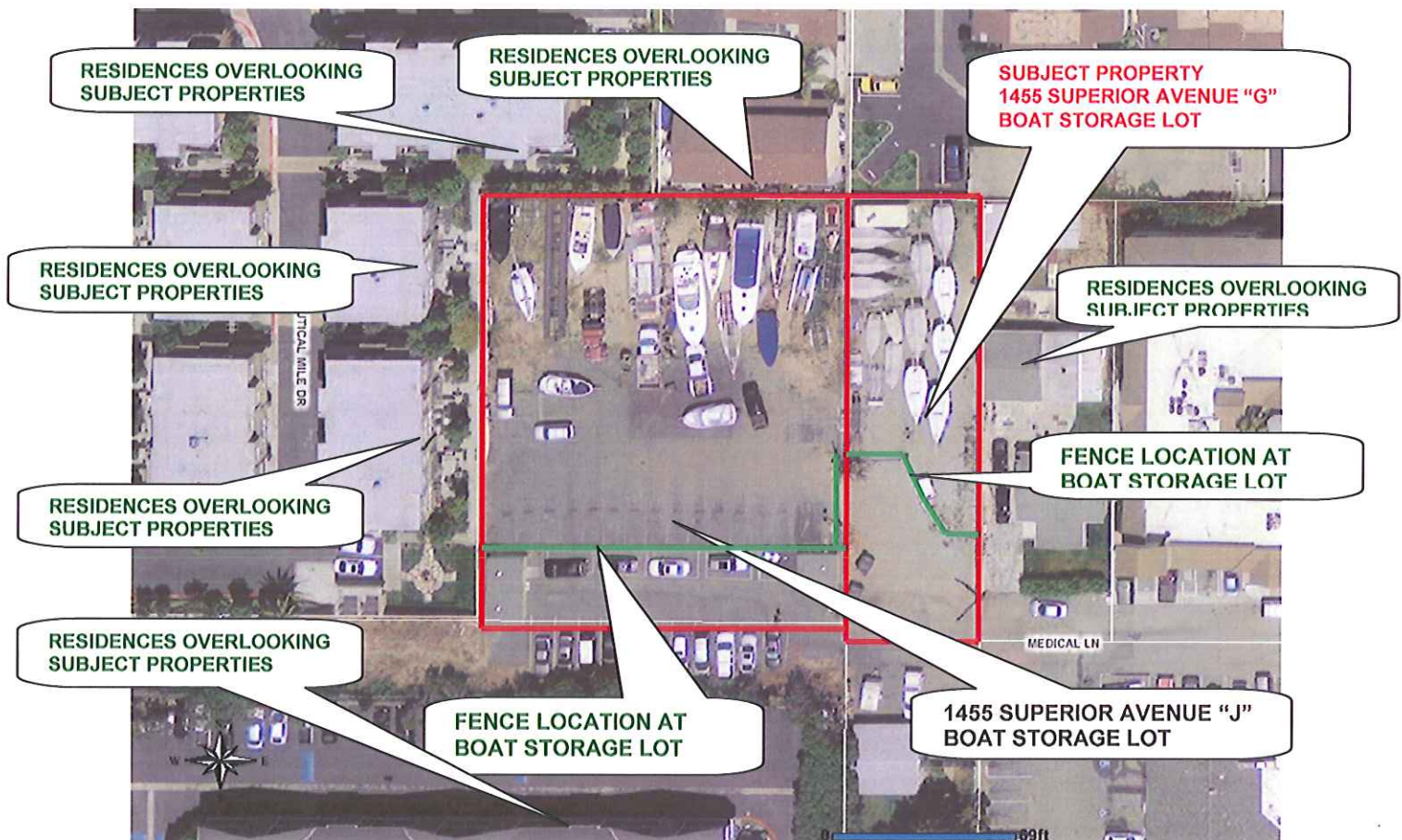
**(3) Suitability of the structure for an alternative use.**

There is no structure on the property and it is therefore suitable for the construction of a new residential project or another permitted or conditionally permitted use. Any new residential use would have to comply with all current municipal requirements, including height, floor area and parking. The current designations would allow up to three dwelling units and require six garage parking spaces and two visitor parking spaces on site.

The owner indicates that the continued boat storage use will prevent unauthorized use of the property and is a better alternative than a vacant lot.

**(4) Harm to the public if the use remains beyond the abatement period.**

A neighbor to the west has raised concern that the continued boat storage use of the property is not compatible with the surrounding residential uses, for reasons related to traffic and aesthetics. The neighbor states that the boat storage use is a blight to the area and points to the unsightliness of the views of the neighboring residential use that overlook the subject property, as evidenced by the attached Photo Presentation of the Site (Attachment No. 3).





It should be noted that boat storage use is permitted only in the CM (Commercial Recreational and Marine) Districts of the City. It appears that the use of this property for boat storage has no approvals under any of the previous or current zoning district regulations. Staff therefore recommends that extension of this use be limited to the current lease term and that boat storage be abated after that time. Additionally, in order to reduce the visual impacts during the term of the current lease, it is staff's recommendation that the outdoor storage be limited to boats and vehicles (Photo Presentation of the Site, Attachment No. 3).

**(5) Cost and feasibility of relocating the use to another site.**

The applicant's submittal indicates that the relocation of the present boat storage use would be costly since there is no other vacant land or parcel within the vicinity. Staff recommends extension of the abatement period to honor the existing lease obligations and that the boat storage and service use be abated after that. Since there are no structures or other physical improvements, the property owner's cost is minimal, with the exception of the loss of rental income. The use of the parcel for parking of vehicles is consistent with other uses in the vicinity.

Recommendation

As discussed in Finding and Considerations section above, the applicant has presented information and a request for an extended period for a minimum of 10 years for the property, however, staff recommends extension to December 31, 2013.

That the request for the extension beyond the required one year abatement period (December 31, 2013), be approved based on the following findings and considerations:

1. That the applicant would suffer significant economic hardship as a result of the abatement requirement, if required to abate the use prior to expiration of the current lease, which could subject the property owner to a potential lawsuit by the current tenant.
2. That one year is not an adequate period of time to amortize the property owner's investment in the property, especially since the current lease has an expiration date of August 31, 2013, that an extension to December 31, 2013, consistent with the recommendation for the boat storage facility next door at 1455 Superior Avenue "J", is appropriate in this case.
3. That the property became nonconforming in 2006, 5 years ago, when the City Council adopted Resolution No. 2006-76 approving the "General Plan Update".
4. That there is no structure associated with this nonresidential use and therefore conversion to a residential building will not require any demolition of existing structures in order to construct a new residential structure.
5. That the boat storage use is located in an area that is occupied by other nonresidential uses; including medical office, and a skilled nursing facility and assisted living facility. However, the continued boat storage use is not compatible with the adjacent residential uses that overlook the property. That abatement in consideration of the existing lease will eliminate the aesthetic impact on the



neighboring residential units and protect the property owner from potential lawsuit that could be caused by abatement prior to expiration of the lease term.

6. That there are no discretionary approvals for the boat storage use or the commercial parking facility use, and there is no information on the use of the property prior to the current lease to justify an extension beyond the lease term.
7. That the abatement extension to December 31, 2013, is appropriate in that it is consistent with the current lease and the recommended extension for the boat storage facility on the adjacent parcel, and the required abatement period specified by Section 20.38.100 C-1.b of the NBMC, as applies to nonresidential uses in residential districts.

## **CONCLUSION**

Based on the information submitted by the applicant, adequate justification has been presented to extend the period of abatement. Therefore, in accordance with the provisions of Section 20.38.100 of the NBMC, the Hearing Officer may approve the request for extension of the abatement period based on the Findings and Consideration and testimony presented at the hearing. It is recommended that the Hearing Officer take the following action;

- Adopt the attached Resolution for the property located at 1455 Superior Avenue "G", based on the findings and considerations discussed in this report, approving the Abatement Period Extension to December 31, 2013 (See Attachment No. 1).

## **Environmental Review**

The project is categorically exempt under Section 15301, of the California Environmental Quality Act (CEQA) Guidelines - Class 1 (Existing Facilities).

## **Public Notice**

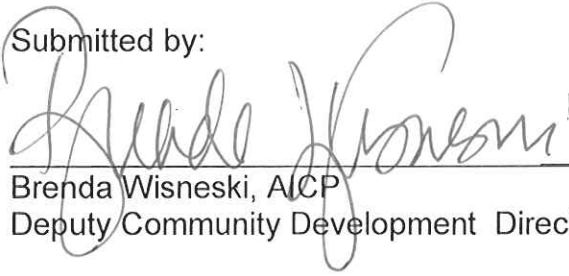
Notice of this hearing was published in the Daily Pilot, mailed to property owners within 300 feet of the property and posted at the site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting which was posted at City Hall and on the City website.

Prepared by:



Javier S. Garcia, AICP  
Senior Planner

Submitted by:



Brenda Wisneski, AICP  
Deputy Community Development Director

**ATTACHMENTS**

- NO. 1 Draft Resolution Approving the Abatement Extension Request
- NO. 2 Applicant's Extension Application
- NO. 3 Photo Presentation, 1455 G Superior Avenue
- NO. 4 Aerial Photos 2011, 2010, 2009, 2006, AND 2001
- NO. 5 Letter in Opposition from a Neighbor to the West, Newport Knolls HOA

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Tmpl: 06/22/11

**DRAFT RESOLUTION**  
APPROVING THE ABATEMENT  
PERIOD EXTENSION

1455 SUPERIOR AVENUE "G"  
(PA2011-033)

**ATTACHMENT No. 1**

RESOLUTION NO. HO 2011- \_\_\_\_

**A RESOLUTION OF A HEARING OFFICER OF THE CITY  
OF NEWPORT BEACH APPROVING THE ABATEMENT  
EXTENSION PERIOD FOR THE PROPERTY LOCATED AT  
1455 SUPERIOR AVENUE "G"(PA 2011-033)**

**WHEREAS**, Chapter 20.38.100 of the Newport Beach Municipal Code (NBMC) requires nonconforming nonresidential uses in residential zoning districts to be abated and terminated upon the expiration of time periods identified by the NBMC. Following the issuance of an Abatement Order, Chapter 20.38.100 provides that a property owner may request an extension of the abatement period in order, to amortize a property owner's investment in the property and avoid an unconstitutional taking of property; and

**WHEREAS**, an application was filed on behalf of The Rawlins Family Trust, the owner of property located at 1455 Superior Avenue "G", and legally described as Portion of Lot 818, First Addition to Newport Mesa Tract, requesting an extension of the abatement period specified by the NBMC Section 20.38.100. If granted, the extension will allow the continued operation of existing boat storage use to December 31, 2013. The property is located in the RM (2420) Zoning District, where such nonresidential uses are not permitted; and

**WHEREAS**, a public hearing was held on December 15, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the NBMC and other applicable laws. Evidence, both written and oral, was presented and considered at this meeting; and

**WHEREAS**, the hearing was presided over by Hon. John C. Woolley, retired Judge (California Superior Court, Orange County), Hearing Officer for the City of Newport Beach; and

**WHEREAS**, the findings and considerations of Section 20.38.100 (C.4(c)) of the NBMC and facts in support of the findings and considerations are as follows:

- 1. The length of the abatement period is not appropriate considering the owner's investment in the use;**

Facts in Support of Finding: The vacant lot is currently utilized as a boat storage facility with a lease term that will expire on August 31, 2013, including lease options. Staff recommends that the abatement extension to December 31, 2013 will accommodate the current lease term and will coincide with the lease term and boat storage facility on the adjacent parcel at 1455 Superior Avenue "J".



- 2. The length of time the use was operating prior to the date of nonconformity justifies the extension of the abatement period beyond the code specified one year.**

Facts in Support of Finding: The property became nonconforming with the General Plan in 2006, 5 years ago, when the City Council adopted Resolution No. 2006-76 approving the “General Plan Update”. The existing use conformed to the Land Use Element of the General Plan for the prior 47 years; or was nonconforming and not subject to abatement. The use of the property for boat storage is a nonresidential use and therefore subject to abatement.

- 3. The existing structure is not suitable for conversion to an alternate use.**

Facts in Support of Finding: There is no structure on this property and is therefore suitable for the construction of a new residential project or expansion of the adjacent skilled nursing facility or the adjacent assisted living facility.

- 4. No harm to the public will result if the nonresidential use remains beyond the one year abatement period.**

Facts in Support of Finding: The property is located in an area that is occupied by other nonresidential uses; including office, medical office (across Superior Avenue) and a skilled nursing facility. It is anticipated that the continued boat storage use is not compatible with the adjacent residential uses that overlook the property. Abatement in consideration of the existing lease will eliminate the aesthetic impact on the neighboring residential units and protect the property owner from potential lawsuit that could be caused by abatement prior to expiration of the lease term. Additionally, that the outdoor storage limited to the storage of boats and vehicles will also reduce the aesthetic impacts on the neighboring residential uses.

- 5. The cost and feasibility of relocating the use to another site cannot be accommodated within the one-year abatement period.**

Facts in Support of Finding: The applicant indicates that the relocation of the present boat storage use would be costly since there is no other vacant land or parcel within the vicinity. Staff recommends extension of the abatement period to honor the existing lease obligations and that the boat storage and service use be abated after that. Since there are no structures or other physical improvements, the property owner's cost is minimal, with the exception of the loss of rental income.

**WHEREAS**, this activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines. It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and therefore it is not subject to CEQA.

**NOW THEREFORE, BE IT RESOLVED:**

**Section 1.** The Hearing Officer of the City of Newport Beach hereby approves the requested Abatement Period Extension (PA2011-033), subject to the findings and considerations set forth above.

**Section 2.** The Abatement Period Extension for the property located at 1455 Superior Avenue “G”, and legally described as Portion of Lot 818, First Addition to Newport Mesa Tract, is hereby extended and will expire on December 31, 2013, at which time all nonresidential use of the property shall cease or the building be demolished, unless an additional extension of the abatement period is granted; or an appropriate change in the Zoning District and the General Plan Land Use Designation are approved and adopted; or a change to the Zoning Regulations pertaining to nonconforming uses or their abatement are approved and adopted prior to that date.

**Section 3.** This action shall become final and effective fourteen (14) days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20, Planning and Zoning, of the Newport Beach Municipal Code.

**APPROVED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2011.**

By: \_\_\_\_\_  
Hon. John C. Woolley, retired Judge  
(California Superior Court, Orange County)  
Hearing Officer for the City of Newport Beach

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPLICANT'S EXTENSION APPLICATION**

1455 SUPERIOR AVENUE "G"  
(PA2011-033)

**ATTACHMENT No. 2**



# Abatement Period Extension Application

## Planning Department

3300 Newport Boulevard, Newport Beach, CA 92663  
(949) 644-3200 Telephone | (949) 644-3229 Facsimile  
[www.newportbeachca.gov](http://www.newportbeachca.gov)

<b>Property Owner/Applicant</b> Name: LISA DE LORMIER  Mailing Address: 1000 San Marino Avenue San Marino, CA 91108  Phone: (818) 954-1990 Fax: ( ) _____ Email Address: richandlisa1000@att.net	<b>Contact (if different)</b> Name: _____  Mailing Address: _____  Phone: ( ) _____ Fax: ( ) _____ Email Address: _____
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## Owner's Affidavit

I **Lisa deLormier** depose and say that I am the owner of the properties involved in this application. I further certify, under penalty of perjury, that the foregoing statements and answers herein contained and the information herewith submitted are in all respects true and correct to the best of my knowledge and belief.

Signature(s) Lisa deLormier Date 12/1/11

NOTE: An agent may sign for the owner if written authorization from the record owner is filed with the application.

**Please answer the questions below. Attach additional sheets, if necessary.**

**Site Address:** 1445 G Superior Avenue (Vacant Parcel with Boat Storage)

1. Please describe how abatement of the use at this time relates to your investment in the use and the abatement period requested.

I own this individual lot which is adjacent and contiguous to other lots owned by my mother's estate. Having had discussions about the redevelopment of these properties over the last few years with the City Planning Staff, we have the desire to eventually develop this property in conjunction with my mother's properties as a continuous care community, working off of her existing convalescent hospital use. That overall project would be conforming with the new zoning designation. However, vacating the current boat storage use will severely impact my financial ability to contribute to the planning of the development properties. I hereby request an extension of the abatement period for ten years. This time period will allow my lease to run it's course in unison with the leases on the estate properties, as well as proceed forward with our plans of redeveloping our properties into conforming uses. Our intention was to move forward with submitting and processing the development plans at the time of my mother's passing, because of estate planning obligations. When we submitted our request for an abatement extension, my mother was expected to live for many years. However, she passed away unexpectedly in October and we are now in the throes of closing her estate.



2. How long has the use been operating?

I have been renting the vacant lot to a non profit sailing club for children since 2003, and they store their boats there. They have a new, five-year lease in place.

3. Please describe the suitability of the structure for an alternative use.

As this is a vacant lot, it is suitable for alternative uses. As noted above in 1, it is the intention to repurpose this lot as well as my mother's properties to conforming uses. My parcel at 1455 G is currently leased for storage of boats. We have had numerous problems with use of the vacant property for living, trash dumping, informal use as a neighborhood skateboard park, and even an unauthorized birthday party. These uses created a nuisance, sights and smells that were unpleasant, and liability for us. The presence of the boats on the lot has caused these issues to go away. The income from the lease allows us to offset the taxes and maintenance fees associated with the property, which in turn will allow us to fund the predevelopment costs of the future plan.

4. Please describe way there would be no harm to the public if the use remains beyond the abatement period.

The continued use of boat storage on the vacant lot precludes the other negative uses. If the boat lease is terminated, those other uses will likely return, and our ability to deal with them will be limited due to the lack of available funds. So, the public would benefit from the existing use continuing until such time as the new development can proceed. It should be noted that the vacant lot is basically land locked, accessed off of an easement and is not visible from Superior.

5. Please describe the cost and feasibility of relocating the use to another site.

The boat storage could be relocated to another site, however many of the other options are much more expensive for the tenant. As this is a non-profit sailing club for children, they do have a limited ability to pay. It has been a mutually beneficial endeavor to have their presence on site as a way of mitigating the previous problems as well as giving them an affordable alternative for their storage needs.

6. Is there any other evidence relevant to the determination of whether an extension of the abatement period is required to avoid an unconstitutional taking of property?

This property as well as my mother's adjacent properties have been in our family for more than 50 years. We have operated and maintained these properties without incident for the entire time. We are dedicated to the eventual redevelopment into a use that conforms to the new zoning designation of multi-family residential, but need the time to make it through the current economy and manage the estate issues that will allow our family to retain ownership and construct a new project. It is our intention to continue to move the redevelopment forward, but until the passing of my mother, we are unable to get a formal approval of the new development because that will alter the value of the properties such that we will be forced to sell them to pay the estate taxes on the increased value. We keep the properties clean well maintained, and due to that have been able to keep many of our tenants for years.

We have approached the redevelopment in a proactive way. Over a year ago we engaged the services of an architect to assist us in the planning process. We have shared our tentative plans with the Planning Staff and have implemented many background steps to prepare for the eventual development application process. If the abatement period is not extended, all of this effort and continued progress will stop, and what is now a well maintained active project will become abandoned and a potential eyesore to the community. The extension will set the stage for what will be a future asset to the entire community.

December 1, 2011

Dear Jay:

I'm glad we are able to go to hearing on this issue, and thank you for your assistance. As you know from our meeting with you in March and with others at the City over the years, we are committed to redeveloping our properties in alignment with the City's General Plan. Our concern is that of timing. When we submitted our request for an abatement extension, my mother was expected for many years. She passed away unexpectedly in October and we are now in the throes of closing her estate.

1441 Superior Avenue is adjacent to our property at 1445, an occupied skilled nursing facility (SNF). Our lease for that SNF expires on December 31, 2020; only if we give the tenant 12-months notice that that we intend to discontinue operation of the facility. Otherwise, they have an option to extend the Lease term. This property is central to our redevelopment planning, in that we will either redevelop our surrounding properties in conjunction with the SNF (a continuous care community, or senior/assisted living), or raze it all and build condominiums. Our preference is to pursue the first scenario, and as you know, we've been working with an architect toward that end.

We can't do much until the SNF Lease term of December, 2020, and given our tenant's right to transition out of their occupancy, our request for a 10 year extension remains unchanged.

Here is the other information you requested:

1455 "G" – the original Lease is dated August 15, 2003, and it expires on August 31, 2013. The Lease terms are extended by amendment to the current Lease, and we have had only one tenant (Newport Balboa Sailing and Seamanship Association) since the Lease's inception.

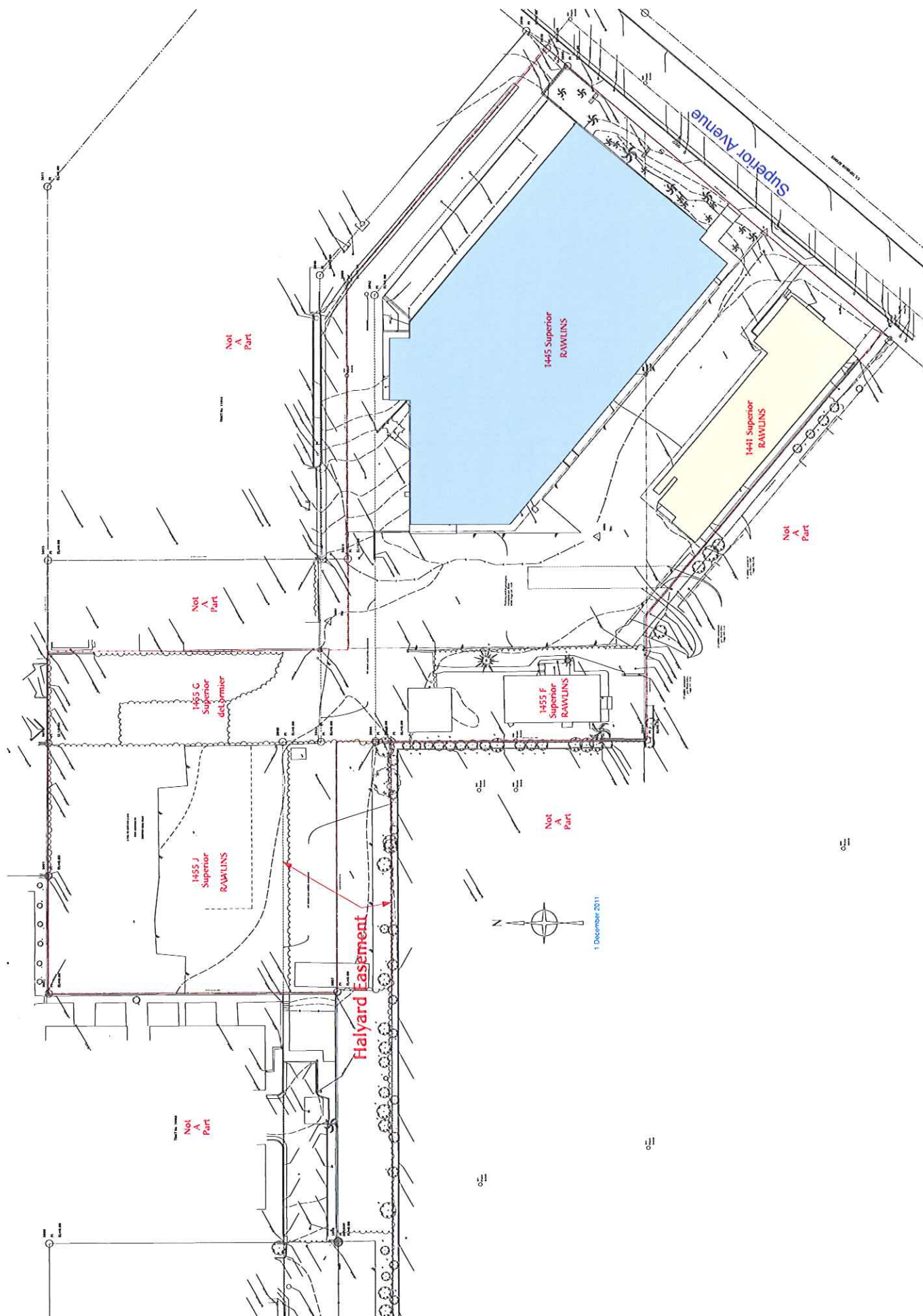
1441 – the building has 8 suites, and 7 are currently leased. Superior Rehabilitation Center occupies three suites, has been our tenant since 1989 and their current Lease term ends this month. They would like to remain in the space. 1<sup>st</sup> Medical Supply occupies 2 suites and their Lease expires on June 30, 2013. The Social Group occupies one suite and their term ends June 30, 2012, and Premiere Home Health Care occupies one suite and their term ends August 31, 2012.

The income from 1441 is important to us, as stated in our original request letter. As important is what would we do with an empty building? It would make more sense to redevelop it with the SNF, and raze it when and if the SNF is demolished.

Question: You did not mention 1455 "J" (vacant lot) in your email. Is it included in the staff report you are preparing for the hearing?

Thank you – please let me know if I can provide anything further.

Lisa deLormier



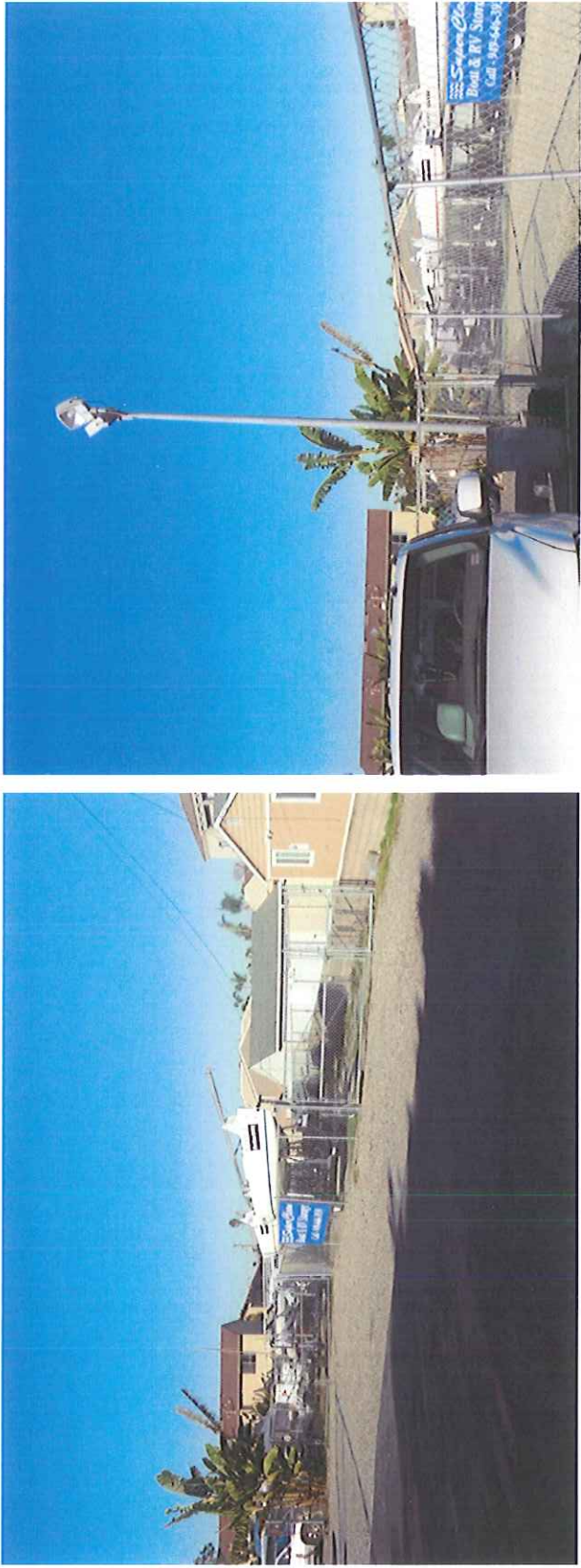
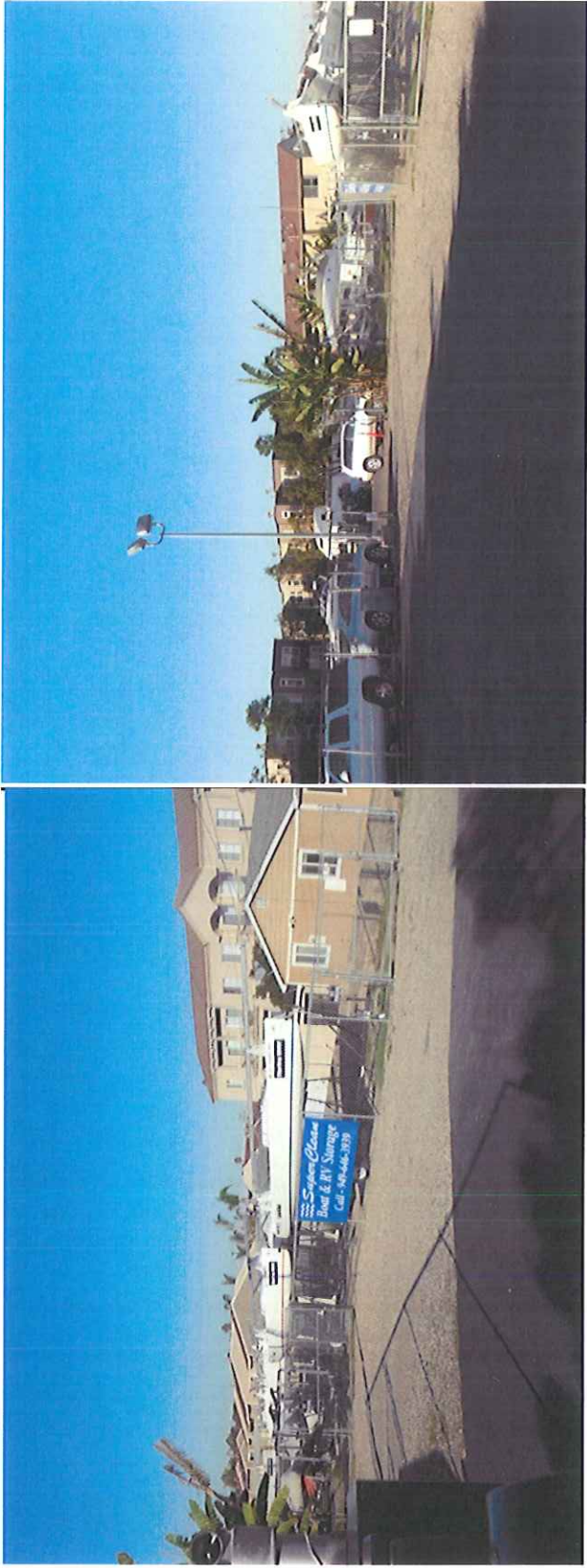
## **PHOTO PRESENTATION**

1455 SUPERIOR AVENUE "G"  
(PA2011-033)

# **ATTACHMENT No. 3**



PHOTO PRESENTATION – 1455 G SUPERIOR AVENUE



1455 G SUPERIOR AVE IS NOT VISIBLE FROM SUPERIOR AVENUE

**AERIAL PHOTOS  
2011, 2010, 2009, 2006, AND 2001**

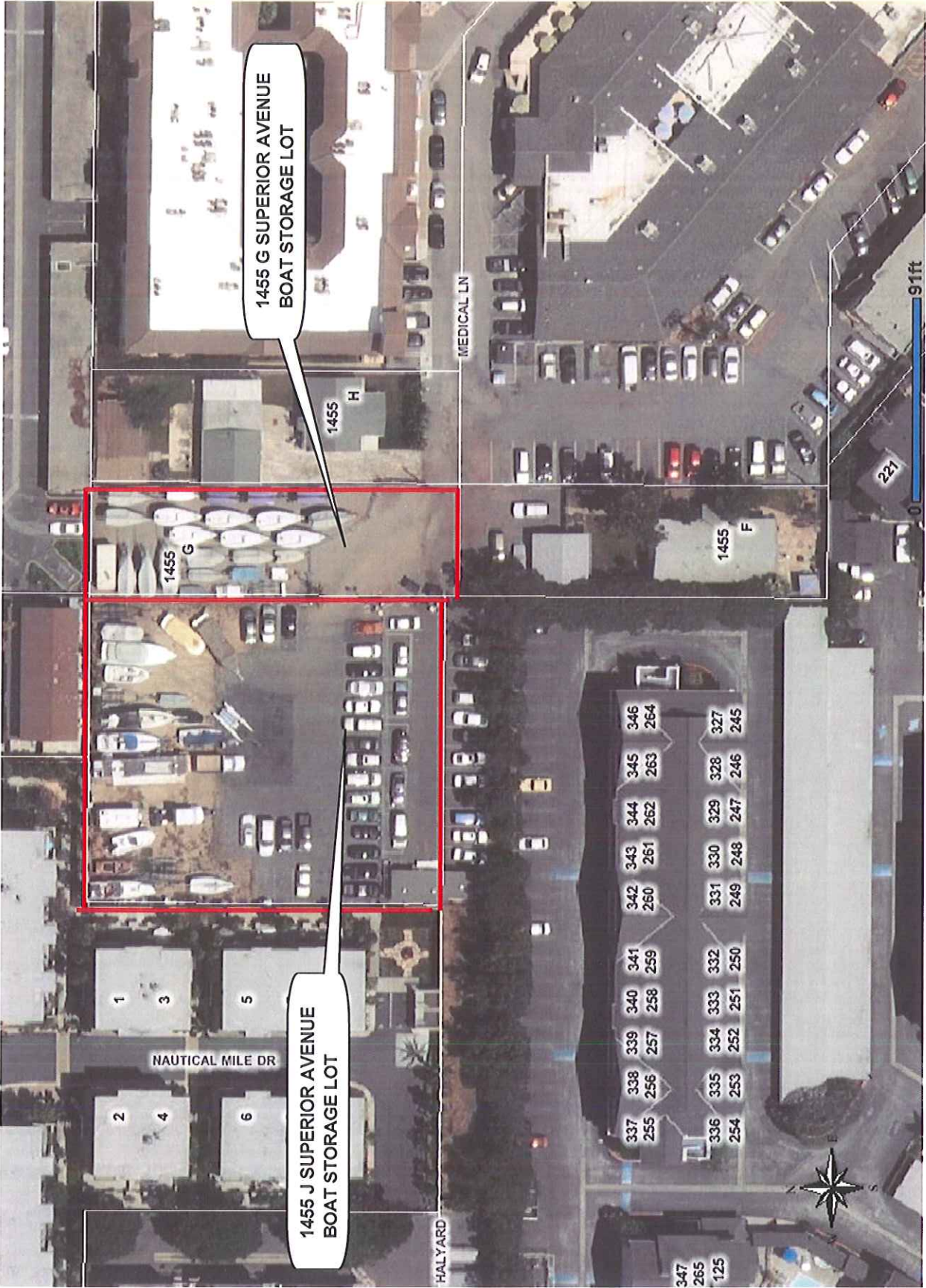
1455 SUPERIOR AVENUE "G"  
(PA2011-033)

**ATTACHMENT No. 4**





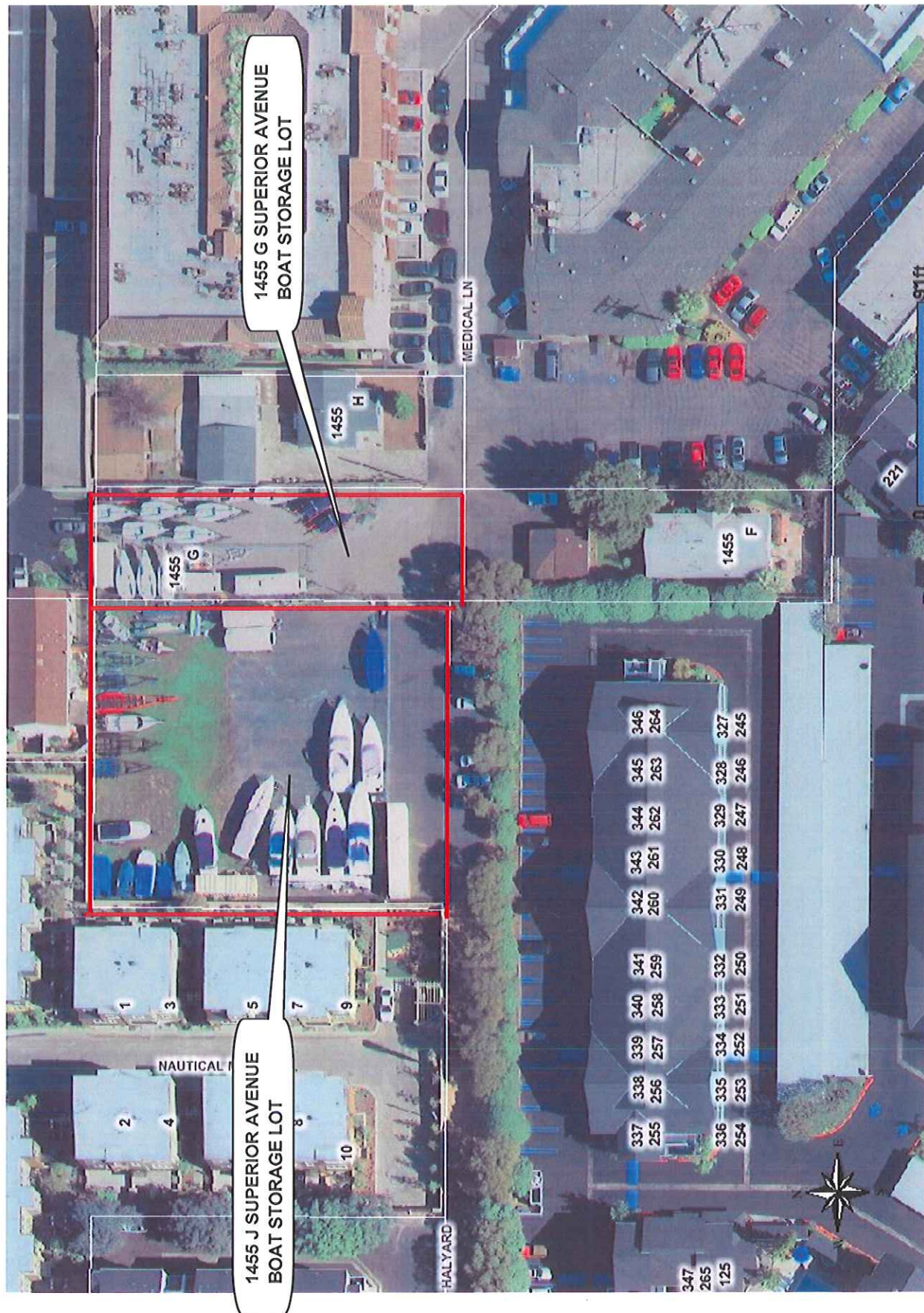














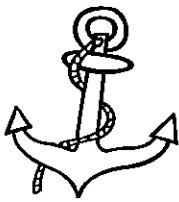


**LETTER IN OPPOSITION FROM  
A NEIGHBOR TO THE WEST,  
NEWPORT KNOLLS HOA**

1455 SUPERIOR AVENUE "G"  
(PA2011-033)

**ATTACHMENT No. 5**





# Newport Knolls Homeowners Association

A Mutual Benefit Not-For-Profit Corporation  
% AM/PM PROPERTY MANAGEMENT, INC.  
16882 Gothard St. #E, Huntington Beach, CA 92647  
Fax (714) 848-0542 **(714) 963-4500**  
[www.amprmproperties.com](http://www.amprmproperties.com)

December 7, 2011

Jay Garcia, Senior Planner  
City of Newport Beach  
3300 Newport Boulevard, Building C, 2<sup>nd</sup> Floor  
Newport Beach, CA 92663

Re: Project File No: PA2011-033 and PA2011-032

Dear Mr. Garcia,

Thank you for meeting with Scott Christian, Lisa Scott and Susan Harris yesterday. Our community of 26 homes is **NOT** in favor of the City of Newport Beach approving the **Abatement Period Extension** for Lisa de Lorimier OR the Rawlins Family Trust.

Listed below are our reasons for this:

- 1) The boat storage is a blight in the area. It is not up to the standards of living in Newport Beach.
- 2) The boat storage decreases our property values.
- 3) The boat storage reduces our style of living as we must see this unattractive area.
- 4) The Rawlins Family met with our Board of Directors and told us the City of Newport Beach required access to the boat storage from Monrovia through our residential homes and required them to use our private driveway. They said the City would no longer permit them to use Superior Avenue to access the boat storage. **According to the City, that is totally FALSE and incorrect.**
- 5) This past summer the Rawlins Family built an asphalt area behind One Nautical Mile so they could connect from Monrovia Avenue, use our driveway to access the new asphalt area and get to the boat storage area. Rather than using it as access for the boat yard they require the employees of their office buildings, and other facilities on Superior to park their vehicles on 1441 and 1455J Superior Avenue. Their employees then walk through a gate in the chain link fence constructed by the Rawlins Family to go to work.
- 6) This additional traffic is a "Health and Safety" issue for our residents. We have eight (8) homes whose garages open directly onto our 30' driveway which these employees now use. Our residents have small children who play in that area as well. The employees must navigate an "S" curve from our driveway to connect 30 feet behind One Nautical Mile to the *new asphalt*. When leaving work, they must again traverse the "S" curve. It is only a matter of time before the buildings are damaged or worse, someone is hurt, or killed. Having this additional traffic is not safe!
- 7) The City approved a new college to be built on Monrovia. We are thrilled with this and understand this will create new traffic in our area. Adding additional traffic from the Superior Avenue facilities will exacerbate this issue needlessly.

Should the City again grant the boat storage again, we request

- a) Approval should be limited to a term not to exceed 3 years.
- b) Require all vehicles associated with the Rawlins/de Lorimier Properties to use Superior Avenue as ingress and egress.
- c) If the City approves the Abatement, require the Rawlins/de Lorimier owners to improve the 30' area to the south of Newport Knolls that abuts The Beach House at their own expense and use that area for ingress and egress instead of our driveway. That would reduce the liability to our property and more importantly, protect the residents of our community.

Thank you for your attention to this matter.

Sincerely,

Betsy Malone, President



# HARLE | JANICS | KANNEN

a law corporation  
10979

December 13, 2011

VIA ELECTRONIC TRANSMISSION  
[jgarcia@newportbeachca.gov](mailto:jgarcia@newportbeachca.gov)  
AND HAND DELIVERY

Jay Garcia, Senior Planner  
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Newport Beach, CA 92663

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DEVELOPMENT  
CITY OF NEWPORT BEACH

Re: Rawlins Abatement Period Extension; Project File No. PA2011-032  
DeLorimier Abatement Period Extension; Project File No. PA2011-033

Dear Mr. Garcia:

As legal counsel for the One Nautical Mile Association ("Association"), I have been asked to submit to the City of Newport Beach the Association's objections to the above-referenced abatement period extension requests relating to the boat storage yards. The One Nautical Mile community consists of 42 homes adjacent to the properties located at 1455 Superior Avenue G and J. The following sets forth the Association's objections:

1. The boat storage yards are a blight to the neighborhood and not up to the aesthetic standards of Newport Beach.
2. The boat storage yards decrease the One Nautical Mile property values.
3. The boat yards are being used for parking vehicles of employees in neighboring commercial buildings, resulting in increased traffic and safety concerns.
4. The boat yards are very noisy late at night and early in the morning, including running engines and compressors, sanding, and other maintenance and repair noises. The Newport Beach Police have been called to the area on numerous occasions as a result of the unreasonably loud noise coming from the boat yards.

Metro Center

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Jay Garcia, Senior Planner  
City of Newport Beach  
December 13, 2011  
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Should the City be inclined to grant an extension to the abatement periods, the Association requests no more than a one (1) year extension. Additionally, the Association requests that the boat yard hours be limited to 8:00 a.m. to 8:00 p.m. in order to address the loud noises coming from the boat yards early in the morning and late at night.

Thank you for your consideration to the Association's requests.

Very truly yours,

A handwritten signature in black ink, appearing to read 'KAK', followed by a long horizontal flourish.

Karen A. Kannen

KAK:cmg

cc: Board of Directors, One Nautical Mile Association